



**Board of Selectmen Meeting - AMENDED**  
Monday, March 25, 2019 7:00 PM  
36 Bartlet Street, Andover, MA 01810  
Selectmen's Conference Room

RECEIVED  
TOWN CLERK'S OFFICE

2019 MAR 21 P 4: 08

TOWN OF ANDOVER, MASS

- I. **Call to Order – 7:00 P.M.**
- II. **Opening Ceremonies – 7:00 P.M.**
  - A. Moment of Silence/Pledge of Allegiance
- III. **Communications/Announcements/Liaison Reports – 7:05 P.M.**
- IV. **Citizens Petitions and Presentations – 7:10 P.M.**
- V. **Regular Business of the Board**
  - A. Elm Street Conservation Restriction – (10 minutes)  
Board to review and consider approving three restrictions presented and approved by the Conservation and Planning Boards:
    1. Conservation Restriction
    2. Affordable Housing Restriction
    3. Age Restriction
  - B. Sewer Use Agreement, 160 Dascomb Road – (10 minutes)  
Board to receive a first reading on the Intermunicipal Sewer Use Agreement between Dascomb Road Limited Partnership and the Town of Tewksbury for the property at 160 Dascomb Road.
  - C. Statement of Interest (SOI) Vote – (10 minutes)  
Board to vote to authorize the Superintendent of Schools to submit a Statement of Interest (SOI) to Massachusetts School Building Authority (MSBA) for the Andover High School project.
  - D. Annual Town Meeting Articles – (90 minutes)  
Board to consider voting to take a position on the following articles:

Article 11	G. Rescinding of Bond Authorizations
Article 64	Spring Grove Cemetery Transfer of Property
Article 26	Electronic Voting
Article 27	Rental of Electronic Voting System
Article 41	Parking and Hardscape Improvements
Article 49	Amend Zoning Bylaw Article VIII: Solar Energy
Article 54	Special Permit Lapse

Article 56	Amend Section 51 of Bylaw Article XII – Ban Polystyrene Only
Article 57	Water Commission
Article 58	Representative Town Meeting
Article 59	Free Cash
Article 62	Greenwood Road Sidewalk
Article 63	Dascomb Road Sidewalks
Article 66	Planning Board Term

## VI. Consent Agenda

### A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved:

Department	Name	Position	Rate/Term	Date of Hire
Community Services	Jemma Lambert	Director of Community Services	\$127,500	4/22/2019
Community Services – Recreation	Trenton DeBonis	Seasonal	\$12.00/hour	4/1/2019
Community Services – Recreation	Emily Cole	Summer Program Director	\$16.50/hour	6/3/2019
Community Services – Recreation	Carl Grygiel	Seasonal	\$11.25/hour	7/15/2019

## VII. Approval of Minutes

Board to approve minutes from the following meetings:

1. February 11, 2019 Board of Selectmen Meeting

## VIII. Executive Session

A. Board to vote to go into executive session under exemption 6 to consider the purchase, exchange, lease, or value of real property.

B. Board to approve minutes from the following meetings:

1. February 11, 2019 Board of Selectmen Executive Session
2. February 25, 2019 Board of Selectmen Executive Session

## IX. Adjourn

*If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Toni Magras in the Town Manager's Office at 978-623-8215 or by email at [tonia.magras@andoverma.us](mailto:tonia.magras@andoverma.us)*

MEETINGS ARE TELEVISED ON  
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45

March 7, 2019

Tonia Magras  
Office of Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810

RE: Conservation Restriction – Elm Street, Andover

Dear Ms. Magras,

Enclosed please find a copy of the proposed Conservation Restriction to be granted in favor of the Town of Andover by CSH Andover, LLC. The Andover Conservation Commission has reviewed and approved the same at its public meeting on March 5, 2019. We kindly request that this matter be placed on the Select Board's agenda at the earliest available meeting date to allow for the Board's review and approval of the same. It is our understanding that the next available date would be March 18, 2018.

A copy of the Conservation Restriction, as signed by Grantor, is attached hereto. The original document, which includes the signed approval of the Conservation Commission, was hand-delivered to Mr. Lawlor yesterday.

Once the Board has reviewed and accepted the Conservation Restriction, it will be advanced to the Executive Office of Environmental and Energy Affairs for approval and thereafter recorded at the Registry of Deeds.

Should you have any questions, please do not hesitate to contact us.

Sincerely yours,

/Stephanie A. Kiefer/

Stephanie A. Kiefer

Encl.

cc: Carol McGravey, Esq.  
Patrick Lawlor  
John T. Smolak, Esq.

{00129305;v2}

**GRANTOR: CSH Andover, LLC**

**GRANTEE: Town of Andover**, acting by and through its Conservation Commission

**ADDRESS OF PREMISES:** 139-143 Elm Street and 26 Pine Street, Andover, MA

**FOR GRANTOR'S TITLE SEE:** Essex County North Registry of Deeds, Book 15262, Page 113 .

## **CONSERVATION RESTRICTION**

**CSH Andover, LLC**, a Delaware limited liability company qualified to do business in Massachusetts as a foreign limited liability company, having a principal place of business at 1275 Pennsylvania Avenue, N.W., Second Floor, Washington, D.C. 20004, being the sole owner, for its successors and assigns ("Grantors"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to the **Town of Andover**, with a municipal address of 36 Bartlet Street, Andover, Massachusetts 01810, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, their permitted successors and assigns ("Grantee"), for nominal consideration IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on a 5.83-acre portion (the "Premises") of an approximately 9.08-acre parcel of land (the "Property") located in Andover, Massachusetts as more particularly described in Exhibit A and shown on the attached sketch plan in Exhibit B.

### **I. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values ("conservation values").

This Conservation Restriction is required by the following permits: Decision of Andover Planning Board as a Special Permit Granting Authority (Decision No. SP14-09) on Application of CSH Andover, LLC for a Special Permit for Elderly Housing, dated July 23, 2015, as recorded at the Essex (North) Registry of Deeds, Book 15084, Page 88; and Conditions of Approval under Definitive Subdivision Plan Approval pursuant to M.G.L. c.41, §81U, granted by the Andover Planning Board on July 21, 2015, as recorded at the Essex (North) Registry of



Deeds, Book 15084, Page 72 (collectively, and as may be amended from time to time, the “Required Permits”). In addition to the Required Permits, the Property is also subject to the following permits and approvals, including: Decision of Andover Planning Board as a Special Permit Granting Authority (Decision No. SP15-03) on Application of CSH Andover, LLC For a Special Permit for Earth Movement, dated July 23, 2015, as recorded at the Essex (North) Registry of Deeds, Book 15084, Page 81 (the “Earth Movement Special Permit”); Order of Resource Area Delineation, dated November 5, 2014, as recorded at the Essex (North) Registry of Deeds, Book 15113, Page 174, and as extended by Extension Permit for Order of Resource Area Delineation, dated June 20, 2017 and recorded at the Essex (North) Registry of Deeds, Book 15134, Page 223; and a Determination of Applicability, dated June 12, 2017 and recorded at the Essex (North) Registry of Deeds, Book 15113, Page 166, associated with the approved assisted living project and related improvements (the “Project”) as described within the permits and approvals above, or other federal, state or local law, regulation, bylaw or requirement necessary for the construction, operation or maintenance of the Project, including any Wetlands Order of Conditions that may be issued by the Andover Conservation Commission pursuant to Section 40 of Chapter 131 of the Massachusetts General Laws, as may be amended from time to time (collectively, the “Project Permits and Approvals”).

**The conservation values include the following:**

- Open Space Preservation. The Premises provides significant natural value in its present state as open space which has not been subjected to development incompatible with said uses. The Premises contributes to the protection of the scenic and natural character of the Town of Andover and the protection of the Premises will enhance the open-space value of these and nearby lands.
- Public access trails. The Premises will provide trails accessible to the public for passive recreation, education, and nature study.
- Water Quality Protection and Wetlands Protection. Wetlands located on the Premises, including freshwater forested/shrub wetlands as designated by the US Fish and Wildlife Service’s National Wetlands Inventory, serve recognized public interests including, *inter alia*, flood control, prevention of pollution and storm damage, protection of public and private water supply and protection of groundwater supply.

These and other conservation values of the Premises, as well as its current uses and state of improvement, will be described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein, and to be completed within 90 days of the recording of this Conservation Restriction. The Baseline Report (i) will include a complete and accurate representation of the condition and values of the Premises, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the

Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation beyond the scope allowed under Section B below;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel except as required under the Project Permits and Approvals;
- (8) The use of the Premises for more than *de minimis* commercial recreation, business, residential, or industrial use;

- (9) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
- (10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

**B. Reserved Rights and Exceptions**

The Grantor reserves the right (but not the obligation) to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

- (1) Required Permits and Project Permits and Approvals. Any actions and activities required or authorized by the Required Permits or Project Permits and Approvals, as herein defined, to enable the construction and operation of the Project, provided that any such work complies with the terms of this Conservation Restriction.
- (2) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
- (3) Vegetation Management. In accordance with generally accepted forest management practices, selective minimal removing of brush, pruning, mowing and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including fence lines and trails and meadows; any Vegetation Management permitted herein shall be consistent with the plans approved under the Project Permits and Approvals.
- (4) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (5) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (6) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an

archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official);

- (7) Trails. The marking and clearing of existing footpaths, as may be necessary, as well as the creation, marking, clearing, and maintenance of one (1) walking path as substantially depicted on the plans approved under the Planning Board Approvals and shown on Exhibit B as the "Pr Pervious Surface ADA Compliant Walkway"; and with the prior written permission of the Grantee, the construction, operation, and maintenance of unpaved trails only for passive recreational activities. Any trails permitted herein are to be not wider than ten (10) feet;
- (8) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values;
- (9) Outdoor Passive Recreational Activities. Hiking, snow-shoeing, cross-country skiing and other non-motorized outdoor recreational activities in areas designated by the Grantee that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities;
- (10) Stormwater Drainage/Detention Areas. The grading, including the minimal cutting or removing of vegetation, construction, maintenance and repair or replacement of stormwater management improvements, as may be necessary, including but not limited to stormwater detention areas (SWDAs) generally as shown on the plans approved under the Project Permits and Approvals and the use of the same areas, provided that construction activities occur only within the construction phases of the Project as temporary sediment traps and temporary standpipes; maintenance and repair/replacement activities to be ongoing.
- (11) Subsurface Utilities. The construction, maintenance, and repair, or replacement, as may be necessary for underground utilities, including conduits and pipes, for the provision of electricity, gas, water, sewer and cable or telecommunications generally as depicted on the plans approved under the Project Permits and Approvals. Any construction of subsurface utilities not depicted on the Project Permits and Approvals shall require prior approval of the Grantee.
- (12) Landscaping, Stone Walls and Walkway. The installation, maintenance and replacement of landscaping throughout the Premises and the installation, repair, upkeep and maintenance of walkways near the access drive. Such landscaping and walkway to be generally consistent with, and as substantially depicted on, the plans approved under the Project Permits and Approvals. Likewise, the rebuilding of stone walls along Elm Street, as substantially depicted on the plans approved under the Project Permits and Approvals.
- (13) Removal of Existing Driveway extending from Pine Street. The removal of a paved driveway extending from Pine Street onto the Premises together with necessary grading



adjustments, revegetation and landscaping as consistent with the Project Permits and Approvals, as the same may be adjusted pursuant to any Wetlands Order of Conditions that may be issued by the Andover Conservation Commission pursuant to Section 40 of Chapter 131 of the Massachusetts General Laws for such Project work.

- (14) Easements. The Grantor reserves an irrevocable and perpetual right and easement, in, upon, under, and across the portion of the Premises for all purposes described in the Project Permits and Approvals and this document, and to grant utility easements as contemplated by Paragraph 11 to utility companies only as may be required for the Project, for which such easements are now, or hereinafter may be used, in the Town of Andover and, without limiting the generality of the foregoing: (i) to enter upon the Easement Area and thereupon to locate, construct, maintain, and use any and all underground and aboveground services, pipes, pipelines, conduits, replication areas, and all fixtures and facilities appurtenant thereto (referred to as the “Easement Facilities”) for the purposes described above; (ii) to connect with, and maintain a connection to, and to use, any and all Easement Facilities now or hereafter located within the Premises; and, (iii) to do all other acts incidental to any of the foregoing. Grantor further reserves such rights as set forth in an existing Water Line Easement, and given to the Town of Andover, as recorded at the Essex (North) Registry of Deeds, Document 1662 at the Land Court District of the Essex (North) Registry of Deeds., which Water Line Easement is shown on Exhibit B as the “20’ Water Main Easement”; and confirms that a portion of the Premises are further subject to a 5’ Sidewalk Easement given to the Town of Andover, as recorded in the Essex (North) Registry of Deeds in Book 15305, Page 78, and as shown on Exhibit B as “5’ Sidewalk Easement.”
- (15) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially in conformance with the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (16) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction.

Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

### **III. LEGAL REMEDIES OF THE GRANTEE**

#### **A. Legal and Injunctive Relief.**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **B. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

### **C. Disclaimer of Liability**

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

### **D. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

## **IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

Grantor agrees to allow access to and use of the Premises by the general public, but only for passive recreation use or as described in Section II(B)(7) and IIB(9) provided that such agreement by Grantor is subject to Grantor's reserved right to establish reasonable rules, regulations or restrictions on such permitted recreational use for the protection or the purposes and conservation values of this Conservation Restriction, consistent with published rules and regulations governing the use of conservation land in the Town of Andover and otherwise to safeguard the privacy, health, safety and/or welfare of the Assisted Living residential facility, its residents, guests, staff and management personnel as well as to prevent interference with the business operations of the residential facility described in the Project Permits and Approvals. The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from the exculpation from liability to the extent provided in such section.

## **V. EXTINGUISHMENT**

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished,

whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction determined at the time of the gift bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B – above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. ASSIGNABILITY**

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. Grantor shall, upon Grantee's written request, execute (whether for recordation or otherwise) any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; provided no such notices or instruments shall impose additional obligations or restrictions on Grantor or the Premises.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee



in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which conveys title in all or a portion of the Premises, including any recordable leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations of this Conservation Restriction occurring after its ownership of the Premises. Liability for any acts or omissions occurring prior to any such transfer of ownership and liability for any sale if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **X. AMENDMENT**

If circumstances arise under which Grantor and Grantee mutually agree an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that

will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Essex County North Registry of Deeds.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Essex County North Registry of Deeds.

#### **XII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: CSH Andover, LLC, 1275 Pennsylvania Avenue NW, Second Floor  
Washington, DC 20004 Attn: Director of Asset Management

To Grantee: Town of Andover, c/o Andover Conservation Commission, 36 Bartlet  
Street, Andover, MA 01810

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

#### **XIII. GENERAL PROVISIONS**

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous,

any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

#### **XIV. MISCELLANEOUS**

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises..

C. Attached hereto and incorporated herein by reference are the following:

##### Signature pages:

Grantor  
Grantee Acceptance - by Conservation Commission  
Approval by Andover Select Board  
Approval of the Secretary of Energy and Environmental Affairs  
Subordination and Consent

##### Exhibits:

Exhibit A: Legal Description of the Premises  
Exhibit B: Sketch Plan of the Premises  
Exhibit C: Certificate of Authority

WITNESS my hand and seal this 4<sup>th</sup> day of March, 2019,

GRANTOR,

CSH ANDOVER, LLC, a Delaware limited liability company

By:

*Alex Gardiner*  
Name: Alex Gardiner

Title: Authorized Real Estate Signatory

Hereunto duly authorized

DISTRICT OF COLUMBIA

On this 4<sup>th</sup> day of March, 2019, before me, the undersigned notary public, personally appeared Alex Gardiner, and proved to me through satisfactory evidence of identification which was a driver's license to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as its Authorized Real Estate Signatory of CSH Andover LLC, and that he has the authority to sign in that capacity.

*Morgan Dorset*  
Notary Public

My Commission Expires: 8/31/2022





**ACCEPTANCE BY TOWN OF ANDOVER  
BY AND THROUGH ITS CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Town of Andover Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_ 2019, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from CSH Andover, LLC pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

ANDOVER CONSERVATION COMMISSION:

*Kevin J. Porter*

*Kevin J. Porter*

*Ellen Tounson*

*David Greenwood*

*Alexandra Driscoll*

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 5<sup>th</sup> day of March, 2019, before me, the undersigned notary public, personally appeared Kevin Porter, Alexandra Driscoll, David Greenwood, Ellen Tounson and Thomas Bial and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

*Carol Haysan McGravey*  
Notary Public CAROL HAYSAN Mc GRAVEY  
My Commission Expires January 11, 2024

**APPROVAL OF SELECT BOARD**

We, the undersigned, being a majority of the Select Board of the Town of Andover, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2019, the Select Board voted to approve the foregoing Conservation Restriction from CSH Andover, LLC to the Town of Andover acting by and through its Conservation Commission in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

SELECT BOARD:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from CSH Andover, LLC to the Town of Andover acting by and through its Conservation Commission has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
MATTHEW A. BEATON  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared Matthew A. Beaton, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires

**SUBORDINATION AND CONSENT**

The undersigned, Wells Fargo Bank, National Association, having a mailing address at 1750 H Street, NW, 5th Floor, Washington, DC 20006, being the holder of a Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated October 11, 2017 and recorded with the Essex County North District Registry of Deeds at Book 15262, Page 115 (the "Mortgage"), does hereby consent to the execution and grant of that certain Conservation Restriction, recorded herewith and prior hereto, by CSH Andover, LLC in favor of the Town of Andover, Massachusetts, and does hereby further subordinate said Mortgage and its interests thereunder, to the said Conservation Restriction if and as though said Conservation Restriction had been executed and recorded prior to the Mortgage.

Executed under seal as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

Wells Fargo Bank, National Association

By: [Signature]  
Name: Melissa Winton  
Title: Senior Vice President

District of Columbia ss.

On this 11 day of February, 2019, before me, the undersigned notary public, personally appeared Melissa Winton who appeared to me through satisfactory evidence of identification, which was ☐ driver's license, ☒ personally known to me, or ☐ personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, in his/her capacity as SVP of Wells Fargo Bank, National Association.

SEAL



[Signature]  
Notary Public

My commission expires:

District of Columbia: SS  
Subscribed and Sworn to before me  
this 11 day of February, 2019  
[Signature]  
DIANA PATRICIA BECERRA, Notary Public, D.C.  
My commission expires September 30, 2023



**EXHIBIT A - Legal Description of Premises**

**OPEN SPACE 1**

BEGINNING AT A POINT ON THE SOUTHERLY SIDE OF ELM STREET AT THE INTERSECTION OF LOT 3 AND LOT 1;  
THENCE ALONG ELM STREET  
THENCE S51°00'00"W 79.75';  
THENCE S39°00'00"E 180.00';  
THENCE S51°00'00"W 94.41';  
THENCE S68°28'05"E 146.29';  
THENCE N07°25'19"E 132.41';  
THENCE N13°06'56"W 65.86';  
THENCE WITH A CURVE TURNING TO RIGHT WITH A RADIUS OF 60.00' AND A LENGTH OF 17.33';  
THENCE N39°00'00"W 119.75';  
THENCE WITH A CURVE TURNING TO LEFT WITH A RADIUS OF 20.00' AND A LENGTH OF 31.42'  
TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 30,549 SQUARE FEET OR 0.70 ACRES.

**OPEN SPACE 2**

BEGINNING AT A POINT ON THE SOUTHERLY SIDE OF ELM STREET AT THE INTERSECTION OF LOT 3 AND LOT 2  
THENCE WITH A CURVE TURNING TO LEFT WITH A RADIUS OF 20.00' AND A LENGTH OF 30.99';  
THENCE S39°00'00"E 40.08';  
THENCE WITH A CURVE TURNING TO LEFT WITH A RADIUS OF 20.00' AND A LENGTH OF 31.42';  
THENCE WITH A CURVE TURNING TO RIGHT WITH A RADIUS OF 60.00' AND A LENGTH OF 69.24';  
THENCE N73°30'15"E 74.29';  
THENCE WITH A CURVE TURNING TO LEFT WITH A RADIUS OF 194.08' AND A LENGTH OF 125.12';  
THENCE WITH A CURVE TURNING TO RIGHT WITH A RADIUS OF 124.08' AND A LENGTH OF 62.89';  
THENCE S41°48'50"E 101.04';  
THENCE WITH A CURVE TURNING TO LEFT WITH A RADIUS OF 354.39' AND A LENGTH OF 112.98';  
THENCE S09°24'52"W 37.29';  
THENCE S54°39'10"W 130.41';  
THENCE S25°53'00"E 81.31';  
THENCE S54°39'10"W 164.35';  
THENCE N67°24'00"W 130.63';  
THENCE N35°44'46"W 158.38';

THENCE N06°37'48"E 85.72';  
THENCE N68°28'05"W 60.44';  
THENCE S51°00'00"W 38.37';  
THENCE S28°40'40"E 135.90';  
THENCE S51°04'00"W 159.92';  
THENCE S53°12'20"W 111.44' TO PINE STREET;  
THENCE ALONG PINE STREET S27°40'10"E 212.29' AND S22°25'30"E 18.95';  
THENCE N86°50'20"E 90.29';  
THENCE N85°37'00"E 105.07';  
THENCE N86°35'30"E 454.40';  
THENCE N03°24'30"W 185.17';  
THENCE N25°53'00"W 206.51';  
THENCE WITH A CURVE TURNING TO RIGHT WITH A RADIUS OF 344.39' AND A  
LENGTH OF 156.14';  
THENCE N41°48'50"W 101.04';  
THENCE WITH A CURVE TURNING TO LEFT WITH A  
RADIUS OF 134.08' AND A LENGTH OF 67.96';  
THENCE WITH A CURVE TURNING TO RIGHT WITH A RADIUS OF 184.08' AND A  
LENGTH OF 186.61';  
THENCE WITH A CURVE TURNING TO LEFT WITH A  
RADIUS 134.08' AND A LENGTH OF 67.96';  
THENCE WITH A CURVE TURNING TO LEFT WITH A  
RADIUS OF 25.00' AND A LENGTH OF 40.91';  
THENCE WITH A CURVE TURNING TO LEFT WITH A  
RADIUS OF 1475.32' AND A LENGTH OF 138.28'  
TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY  
223,406 SQUARE FEET OR 5.13 ACRES.

**EXHIBIT B**

Sketch Plan of Premises – for recorded plan see Essex North Registry of Deeds Plan Book \_\_\_\_\_  
Page \_\_\_\_\_



## **EXHIBIT C**

### **Certificate of Authority**

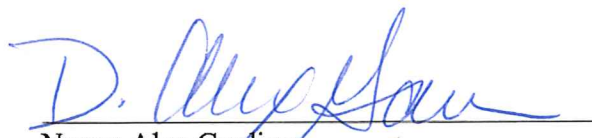
**CERTIFICATE OF AUTHORITY  
(CSH Andover, LLC)**

The undersigned, being Alex Gardiner, of CSH Andover, LLC having its principal office at 1275 Pennsylvania Avenue NW, Second Floor, Washington D.C., 20004 does hereby certify, represent and warrant as follows:

CSH Andover, LLC is a limited liability company organized under the laws of the State of Delaware and duly registered with the Massachusetts Secretary of State Corporations Division to conduct business in the Commonwealth of Massachusetts.

I, Alex Gardiner, am an Authorized Signatory for CSH Andover, LLC. As an Authorized Signatory, I am authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real estate as such authority is set forth in the 2019 Annual Report for CSH Andover LLC, as on file with the Massachusetts Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of CSH Andover, LLC, this 4<sup>th</sup> day of March 2019.



Name: Alex Gardiner

Title: Authorized Signatory

**DISTRICT OF COLUMBIA**

On this 4<sup>th</sup> day of March, 2019, before me, the undersigned notary public, personally appeared Alex Gardiner, and proved to me through satisfactory evidence of identification which was a driver's license to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
Notary Public

My Commission Expires: 8/31/2022

{00129042;v1}





March 13, 2019

VIA EMAIL

Ms. Tonia Magras  
Office of Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810

RE: Affordable Housing and Age Restrictions – 141 Elm Street, Andover

Dear Ms. Magras:

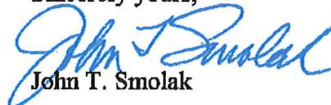
Enclosed please find copies of the proposed Declaration of Affordable Housing Restriction and Declaration of Age Restriction Covenant to be granted in favor of the Town of Andover by CSH Andover, LLC. The Andover Planning Board has reviewed and approved the same at its public meeting last night on March 12, 2019. We kindly request that this matter be placed on the Board of Selectmen's agenda at the earliest available meeting date to allow for the Board's review and approval of the same. It is our understanding that the next available date would be March 18, 2018.

Copies of the Declaration of Affordable Housing Restriction and Declaration of Age Restriction Covenant, as signed by Grantor, are attached hereto. The original documents, which include the signed approval of the Planning Board, are being held by Jacki Byerley in the Planning Division.

Once the Board of Selectmen have reviewed, accepted and signed the Declaration of Affordable Housing Restriction and Declaration of Age Restriction Covenant, the documents will be recorded with the Essex North Registry of Deeds. And once the Conservation Restriction, previously delivered to your office, is signed by the Board of Selectmen, it will be advanced to the Executive Office of Energy and Environmental Affairs (EOEEA) for approval and signature, and thereafter, will also be recorded with the Essex North Registry of Deeds. Because all documents above need to be recorded as a precondition to the Town's issuance of a Certificate of Occupancy under project approvals issued by the Planning Board, and due to the lengthy time it takes for the Secretary of the EOEEA to sign the Conservation Restriction, we respectfully request this matter be placed on the Board's March 18, 2019 agenda. Thank you.

Should you have any questions, please do not hesitate to contact us.

Sincerely yours,

  
John T. Smolak

Encl.

cc: Jacki Byerley, AICP, Planner  
Carol McGravey, Esq.  
Joseph McElwee, Capitol Seniors Housing

## DECLARATION OF AFFORDABLE HOUSING RESTRICTION

(Property Address: 141 Elm Street, Andover, MA)

CSH ANDOVER, LLC, a Delaware limited liability company with a principal place of business at 1275 Pennsylvania Avenue, N.W., Second Floor, Washington, D.C. 20004, its successors and assigns (the "Declarant") hereby makes the following described Declaration of Affordable Housing Restriction on Declarant's interest in and to a parcel of land, together with all the buildings and improvements now or hereafter situated thereon, located at 141 Elm Street, Andover, Massachusetts 01810, as described in more detail in **Exhibit A** attached hereto ("Premises"), in favor of the Town of Andover, Massachusetts, a municipal corporation acting by and through its Planning Board (the "Planning Board") with a usual place of business at the Andover Town Office at 36 Bartlet Street, Andover, MA 01810 ("Andover" or the "Municipality").

WHEREAS, the Declarant was granted a Special Permit for Elderly Housing (SP 14-09) pursuant to Section 7.4 of the Andover Zoning Bylaw, 2014 version (the "Elderly Housing Bylaw") from the Andover Planning Board (the "Special Permit"), permitting the construction of an assisted living residential development at the Premises to be known as "Stone Hill at Andover" (the "Project"), which Project shall contain ninety six (96) residential rental units (the "Units"). The Special Permit has been recorded with the Essex North District Registry of Deeds in Book 15084, Page 88.

WHEREAS, the Special Permit requires a portion of the Project to be rented to Eligible Tenants (as defined below) and at such rental rates as hereinafter provided (as such Units may hereafter be identified from time to time, the "Affordable Units").

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto agree and covenant, that the terms of this Affordable Housing Restriction (sometimes hereinafter referred to as the "Restriction"), authorized by M.G.L. c. 184, §§31-33 and otherwise by law, are as follows:

1. **Purpose.** The purpose of this Affordable Housing Restriction is to ensure that the Affordable Units will be perpetually retained as affordable in accordance with the Special Permit.

2. This Restriction shall prohibit the use of the Affordable Units, when constructed on the Project Site, for any use except assisted living residential use for elderly persons who qualify as low, moderate, or upper-moderate income persons as defined by, and in accordance with, Section 7.4.4 ("Assisted Living Units – Affordability") of the Elderly Housing By-Law ("Eligible Tenants"), and the Special Permit.

3. Declarant shall comply in all respects with Section 7.4.3 of the Elderly Housing Bylaw, entitled "7.4.3. Assisted Living Residences — Dimensional Requirements and Design Standards." Declarant shall engage a Monitoring Agent to ensure that the Declarant is abiding



by its obligations relative to the Affordable Units pursuant to the Special Permit.

4. Scope. The Declarant intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Affordable Housing Restriction regulating and restricting the use, occupancy and transfer of the Premises (i) shall be and are covenants running with the Premises, encumbering the Premises in perpetuity, binding upon the Declarant's successors in title and all subsequent owners of the Premises, (ii) are not merely personal covenants of the Declarant, and (iii) shall bind the Declarant and its successors and assigns (and the benefits shall inure to the Municipality and to any present or prospective tenants of the Affordable Units); provided, however, that the Declarant and each successive owner of all or any portion of the Project shall be liable only for the obligations accruing during the period of their respective ownership of the Project.

5. Duration not Limited. This perpetual Affordable Housing Restriction is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. The Declarant hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Affordable Housing Restriction to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that this Affordable Housing Restriction runs with the land.

6. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying the Premises or portion thereof shall expressly provide that such conveyance is subject to this Affordable Housing Restriction, provided, however, that failure to do so shall not be a default hereunder and the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Premises or portion thereof provides that such conveyance is subject to this Affordable Housing Restriction.

7. Permitted Use. For so long as the Premises are used for the Project, the Affordable Units shall be provided as follows:

A. Fourteen (14) of the Units shall at all times be provided as Affordable Units. The Affordable Units are initially identified on **Exhibit B** attached hereto. In the event of any change in the designation of any Affordable Unit within the Project pursuant to the terms of Section 7.C hereof, any such newly designated Affordable Unit shall be similar in size and nature to the previously designated Affordable Unit it replaces.

B. If an Affordable Unit within any given Income Tier (as more particularly described in Section 7 below) is not leased to an Eligible Tenant (as defined below) within one hundred twenty (120) days following the initial occupancy of the so-called

“household” (i.e., wing) of the Project within which the Affordable Unit is located, then any such vacant Affordable Unit may be leased to:

- i. An Eligible Resident who qualifies under a higher Income Tier from the Project’s waiting list; or;
- ii. In the event that any such vacant Affordable Unit is not leased within ten (10) business days to an Eligible Resident from the waiting list from a higher Income Tier, then such Unit may be leased to a market rate resident on market rate terms, subject to the terms hereof.

C. In the event that a vacant Affordable Unit is leased to a market rate resident in accordance with the foregoing Section 7.B.ii, then upon the next similarly sized market rate Unit in the Project becoming vacant, the Declarant shall fill such market rate Unit with a resident from the Project’s affordable housing waiting list at the next lowest Income Tier for which there remains an unfilled Unit, based on the Unit allocation set forth herein. In no event shall the Declarant be required to provide more than fourteen (14) Affordable Units at the Income Tiers outlined in this Restriction at any given time.

D. No entry fee shall be charged for the Affordable Units.

E. The construction of the Project shall meet all applicable codes, regulations, statutes and zoning bylaws of the Town of Andover and all applicable codes, regulations and statutes of the Commonwealth of Massachusetts. The Affordable Units shall be distributed amongst the Units within the Project as set forth on **Exhibit B**. The Affordable Units on the Premises will be perpetually retained as affordable in accordance with the Special Permit and this Restriction.

8. Prior to marketing or otherwise making available for rent any of the Affordable Units, the Declarant shall enter into a monitoring agreement (the “Monitoring Agreement”) with a Monitoring Agent subject to the approval of the Andover Planning Division (which approval shall not be unreasonably withheld, conditioned or delayed), and shall obtain the Monitoring Agent’s approval of a marketing plan for the Affordable Units (which approval shall not be unreasonably withheld, conditioned or delayed). Such marketing plan must set forth a plan for affirmative fair housing marketing of the Affordable Units and effective outreach to protected groups underrepresented in the Municipality. The specific scope of the Monitoring Agent’s roles and responsibilities with respect to the Project shall be more particularly set forth in the Monitoring Agreement.

9. Tenant Selection.

(a) Nondiscrimination. The Declarant shall not discriminate on the basis of race, creed, color, sex, handicap, marital status, sexual preference, national origin or any

other basis prohibited by law in the lease, use and occupancy of the Project (except that the parties expressly acknowledge that the Project, is an age-restricted senior housing assisted living facility for persons aged 55 and older (the "Age Restriction"), and that accordingly the Age Restriction with respect to any and all residents and tenants shall not be deemed a discrimination in violation of this Section 9(a)) or in connection with the employment or application for employment of persons for the operation and management of the Project. The Declarant shall not discriminate against, or refuse to lease, rent or otherwise make available units in the Project to a holder of a federal or state rental certificate or voucher. The parties acknowledge that the building in which the Combined Project is located is a non-smoking facility and that smokers may accordingly be excluded as residents, visitors, or otherwise.

(b) Selection Policies for the Affordable Units. The Declarant shall adopt and submit to Municipality for approval resident selection policies and criteria for the Affordable Units acceptable to Municipality that provide for (i) the selection of residents from a written waiting list in the chronological order of their application, insofar as practicable, or a lottery, and (ii) the prompt written notification to any rejected applicant of the grounds for any rejection. If selection is to be made according to chronological order of application, as aforesaid, then such process shall be fair and open and shall not impede equal housing opportunity for any applicants. An Eligible Tenant is subject to a health assessment by the Declarant to ensure that the Declarant can meet the health needs of the Eligible Tenant, provided that such health assessments shall be no more stringent than the requirements imposed by the Massachusetts Executive Office of Elder Affairs. If the Declarant determines that such Eligible Tenant does not require the services of the Declarant or requires more services than the Declarant provides, the Eligible Tenant will not be offered an Affordable Unit. The Declarant shall also provide the Municipality with an affirmative marketing plan for the Affordable Units reasonably acceptable to the Municipality. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every material respect.

(c) Local Preference. To the extent permitted by the Department of Housing and Community Development (DHCD) or applicable law, with respect to seventy percent (70%) of the Affordable Units (maximum of 10 affordable units), local preference at the time of initial occupancy shall be given to applicants satisfying all applicable eligibility requirements and who qualify as any of the following (in each case as more particularly detailed in the approved marketing plan and resident selection policies):

- i. Current Andover residents, with verification such as rent receipts, utility bills, street listing or voter registration listing;
- ii. Parents of current Andover Residents, with verification provided by current utility bill and with relationship documented via birth certificate;
- iii. Employees of the Town of Andover, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees, with a Town employment history of at least one year, regardless of where they currently reside, with verification from employer;

- iv. Former Andover Resident that attended any educational institution in Andover; and,
- v. Veterans as defined under M.G.L. c. 4, sec. 7, cl. 43, as amended by the Acts of 2005, c. 130.

10. Income and Rent Restrictions for the Affordable Units.

(a) During the term of this Affordable Housing Restriction, one hundred percent (100%) of the Affordable Units in the Project (*i.e.* fourteen (14) Units) shall be leased exclusively to an Eligible Tenant, subject to the provisions of Section 7.B above. An "Eligible Tenant" is an individual who is 55 years of age or older whose annual gross income does not exceed the income tier limitations ("Income Tiers") set forth below.

- i. Three (3) Units are to be provided at a low income affordability level, defined for the purposes hereof as being below 60% of the Median Income (the "Low Tier Maximum Income");
- ii. Seven (7) Units are to be provided at a moderate income affordability level, defined for the purposes hereof as being between 60% and 79% of the Median Income (the "Moderate Tier Maximum Income"); and
- iii. Four (4) Units are to be provided at an upper-moderate income affordability level, defined as being between 80% and 100% of the Median Income (the "Upper-Moderate Tier Maximum Income").

(b) An Eligible Tenant's annual gross income shall be the anticipated total income from all sources received by the individual, including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual income specifically includes and excludes certain types of income as set forth in, and shall be determined in accordance with, 24 C.F.R. § 5.609 (or any successor regulations).

(c) As used herein, the term "Median Income" shall mean the most current Lawrence Standard Metropolitan Statistical Area median income as determined by the U.S. Department of Housing and Urban Development ("HUD").

11. Income Certifications for the Affordable Units. The Declarant represents, warrants and covenants that the determination of whether an individual occupying an Affordable Unit meets the income requirements set forth herein shall be made by Declarant at the time of leasing of the Affordable Units in the Project and thereafter at least annually on the basis of the current income of such individual. Declarant shall maintain as part of its Project records copies of all leases of the Affordable Units in the Project and all initial and annual income certifications by tenants of the Affordable Units in the Project. Within ninety (90) days after the end of each calendar year of occupancy of any portion of the Project, the Declarant shall provide to the

Municipality and the Monitoring Agent annual reports consisting of certifications regarding the annual and monthly gross income of each individual occupying an Affordable Unit at the Project. With respect to individuals who moved to an Affordable Unit at the Project in the prior year, the annual report shall also include certification of such individuals at the time of their initial occupancy at the Project.

Any Affordable Unit occupied by an Eligible Tenant at the commencement of occupancy shall be deemed an Affordable Unit so long as (i) such Unit continues to be rent restricted and (ii) the tenant's income does not exceed 110% of the highest Median Income within the applicable Income Tier. If the tenant's income exceeds 110% of such Median Income as aforesaid at the time of annual recertification determination, his/her Unit (the "Excess Income Tenant Unit") shall be deemed an Affordable Unit until Declarant shall rent to an Eligible Tenant the next available Unit which is not an Affordable Unit and which is otherwise substantially similar to the Excess Income Tenant Unit. If a tenant's income exceeds 110% of such Median Income as aforesaid, such tenant will be required to pay market rent for the Excess Income Tenant Unit when the next Affordable Unit is identified by Landlord and rented to an Eligible Tenant. The annual reports shall be in a form reasonably approved by the Municipality and the Monitoring Agent and shall contain such supporting documentation as the Municipality and the Monitoring Agent shall reasonably require. In addition to the foregoing, Declarant shall keep such additional records with respect to the Affordable Units and prepare and submit to Municipality and the Monitoring Agent such additional reports with respect to the Affordable Units as Municipality and the Monitoring Agent may reasonably deem necessary to ensure compliance with the requirements of this Affordable Housing Restriction.

12. Rent Schedules for the Affordable Units. Prior to initial occupancy of the Affordable Units in the Project and annually thereafter as part of the annual reports required under Section 11 above, Declarant shall submit to Municipality and the Monitoring Agent a proposed schedule of Maximum Monthly Rents for all the Affordable Units in the Project. Such schedule shall be subject to the approval of Municipality for compliance with the requirements of Section 7 above. After approval of a schedule of Maximum Monthly Rents by Municipality, Rents for Affordable Units shall not be increased without the Planning Board's prior approval, not to be unreasonably withheld, delayed or conditioned of either (x) a specific request by Declarant for a rent increase or (y) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least thirty (30) days' prior written notice by Declarant to all affected tenants. In determining the Maximum Monthly Rents for each applicable Income Tier, the percentage of income attributable to rent assumption shall be ninety-two percent (92%).

13. Lease Form for the Affordable Units. The Declarant shall not include in any lease for an Affordable Unit in the Project any of the following provisions:

- (i) Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Declarant in a lawsuit brought in connection with the lease.

- (ii) Agreement by the tenant that the Declarant may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit or deceased. The Declarant may dispose of such personal property in accordance with state law.
- (iii) Agreement by the tenant not to hold the Declarant or the Declarant's agents legally responsible for any action by Declarant or failure to act by Declarant, whether intentional or negligent.
- (iv) Agreement of the tenant that the Declarant may institute a lawsuit without notice to the tenant.
- (v) Agreement by the tenant that the Declarant may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- (vi) Agreement by the tenant to waive any right to a trial by jury. This shall not restrict the Declarant or tenant from electing alternative dispute resolution in lieu of litigation, to the extent permitted by law; provided that participation in such alternative dispute resolution is voluntary and not required of Declarant or tenant.
- (vii) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease. This shall not restrict the Declarant or tenant from electing alternative dispute resolution in lieu of litigation, to the extent permitted by law; provided that participation in such alternative dispute resolution is voluntary and not required of Declarant or tenant.
- (viii) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court or dispute resolution proceeding by the Declarant against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

All leases for Affordable Units in the Project shall be for terms of not less than one (1) year, unless by mutual agreement between the tenant and Declarant, and shall require tenants to provide information required for the Declarant to meet its reporting requirements hereunder. Declarant may not terminate the tenancy or refuse to renew the lease of an occupant of an Affordable Unit of the Project except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; or (iii) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30)

days' written notice from Declarant to tenant specifying the grounds for the action.

14. Notice of Sale. The Declarant shall provide the Municipality and the Monitoring Agent with sixty (60) days' advance written notice of any sale, transfer or exchange of the Project, including the date of the proposed transaction, the name and address of the transferee, and any other information concerning the transaction or the transferee that is reasonably requested by the Municipality.

15. No Demolition. The Declarant shall not demolish any material part of the Project or substantially subtract from any material real or personal property of the Project except if required by law unless after such action the ratio of Affordable Units to total number of remaining Units in the Project is in conformity with the Special Permit in conjunction with renovation or rehabilitation of the Project or construction of a new project on the Premises, in either case subject to the prior written consent of the Municipality, which consent shall not be unreasonably withheld, conditioned or delayed. The Declarant shall not permit the use of any Affordable Unit for any purpose other than rental housing.

16. Casualty. The Declarant represents, warrants and agrees that if the Project, or any material part thereof, shall be damaged or destroyed and Declarant elects to rebuild the Project, (i) the Declarant will use commercially reasonable efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, subject to the approval of the lender(s) which has provided financing for the Project or (ii) if not restored or repaired or relieved, the Declarant shall maintain the same ratio of Units to total number of remaining Units in the Project as required by the Special Permit. The Declarant represents, warrants and agrees that the Affordable Units shall thereafter continue to operate in accordance with the terms of this Affordable Housing Restriction.

17. Inspection. Any use of the Affordable Units or activity thereon which is inconsistent with the purpose of this Affordable Housing Restriction is expressly prohibited. Declarant hereby grants to Municipality, the Monitoring Agent and its duly authorized representatives the right to enter the Premises upon reasonable advance notice to Declarant at reasonable times and in a reasonable manner for the purpose of inspecting the Premises to determine compliance with this Affordable Housing Restriction or any other agreement between Declarant and Municipality. Municipality shall notify Declarant in writing of any alleged non-compliance by Declarant of this Affordable Housing Restriction or any other agreement between Declarant and Municipality, specifying in reasonable detail the nature of such alleged noncompliance and the requested cure. Declarant shall thereafter have thirty (30) days from the date of its receipt of the notice to commence the cure of the alleged noncompliance and shall thereafter use its diligent efforts to complete such cure. If Declarant fails to use its diligent efforts and/or does not cause the alleged noncompliance to be cured, then Municipality may take any reasonable and appropriate action under the circumstances to cure any such violation. Any mortgagee(s) of Declarant shall receive reasonable notice and opportunity to cure before such remedies are exercised.

18. Enforcement. Provided that the applicable notice and cure rights in Section 17 have expired, the Municipality may enforce this Affordable Housing Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Affordable Units to their condition prior to any such violation, and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality. Declarant covenants and agrees to reimburse Municipality all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Affordable Housing Restriction or in taking reasonable measures to cure any violation hereof, provided that a violation of this Affordable Housing Restriction is acknowledged by Declarant or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Affordable Housing Restriction, Municipality does not undertake any liability or obligation relating to the condition of the Premises. If any provision of this Affordable Housing Restriction shall to any extent be held invalid, the remainder shall not be affected.

19. Any election by the Municipality as to the manner and timing of its right to enforce this Restriction, or otherwise exercise its rights hereunder, shall not be deemed or construed to be a waiver of such rights.

20. Further Assurances. The Declarant and its successors and assigns agrees to execute any notices or instruments appropriate to assuring the enforceability of this Affordable Housing Restriction upon Municipality's reasonable request. The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by the Municipality. The Declarant and the Municipality intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval of the date of filing or recording of any instrument evidencing such approval.

21. Upon request by the Declarant, the Municipality shall within thirty (30) days execute and deliver to the Declarant any document, including an estoppel certificate, which certifies the Declarant's compliance with any obligation of the Declarant contained herein. Failure by the Municipality to respond such request within said thirty (30) day period shall be deemed a certification of compliance and a waiver by the Municipality of any claims hereunder.

22. Declarant shall record this Declaration of Affordable Housing Restriction executed by Declarant and the Board of Selectmen with the Essex North District Registry of Deeds, and provide a certified copy thereof to the Municipality.

23. Declarant does hereby declare, represent, covenant and warrant as follows:

(a) Declarant (i) is a limited liability company duly organized under the laws of the State of Delaware and is qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties



and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Restriction.

(b) The execution and performance of this Restriction by Declarant (i) to the best of Declarant's knowledge, will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Declarant is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) Declarant will, at the time of the delivery and recording of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance which would prevent use of the Property for the Project or which would prevent the execution and recording of this Restriction.

(d) To the best of Declarant's knowledge, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Restriction).

24. This Restriction shall be governed by the laws of the Commonwealth of Massachusetts. The invalidity of any clause, part, or provision of this Restriction shall not affect the validity of the remaining portions hereof.

25. This Restriction shall also be and is for the benefit of the Municipality, its successors and assigns.

27. This Restriction shall run with the Property in perpetuity from the date of recordation in the Essex North District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Property or claiming to have an interest with respect to said Property as tenants, invitees, licensees or otherwise, and all of the respective heirs, successors, grantees, mortgagees, assigns, agents, contractors, subcontractors and employees of the foregoing and is not merely a personal restriction of Declarant. This Restriction is hereby intended and declared to be a Restriction in perpetuity held by a governmental body as defined in and with the benefit of M.G.L. c. 184, § 32 and no re-recordation of this Restriction under G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority thereof and Declarant and its successors and assigns, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Restriction. Declarant hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts required to be satisfied in order for the provision of this Restriction to constitute Restrictions running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

27. Notice. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered or if mailed by United States registered or certified mail, postage prepaid, return receipt request, to the parties at their respective addresses set forth below or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice sent by first class mail shall be deemed given two (2) days after mailing; a notice delivered by hand shall be deemed given upon receipt.

If to Declarant:

CSH Andover, LLC  
1275 Pennsylvania Avenue, N.W., Second Floor  
Washington, D.C. 20004  
Attn: Fred Moon

and;

Tatusko Kennedy, PC  
3016 Williams Drive, Suite 200  
Fairfax, VA 22031  
Attn: Brian Kelly, Esq.

If to Municipality:

Town Of Andover  
Planning Department  
36 Bartlet Street  
Andover, MA 01810

28. This Restriction shall not be modified, amended, changed, or terminated or waived without the consent of the Declarant (or Declarant's successor) and the consent of the Municipality. The Declarant as well as the Municipality, may enforce and, if necessary, extend this Restriction in accordance with applicable law. Declarant agrees for itself, and its heirs, successors and assigns to execute and record such notices of restriction as are required to extend this Restriction in perpetuity in accordance with applicable law. The Municipality is hereby declared to be a benefited party to and a holder of this Restriction and the Declarant hereby appoints the Municipality as its attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf which may at any time be necessary for the specific and limited purpose of maintaining this Restriction in effect in perpetuity. Without limiting the forgoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Municipality.

29. If any court or other tribunal of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

30. Declarant and Declarant's successors and assigns, including all subsequent owners of the Property or portions thereof, shall inform a potential purchaser in writing of this Declaration of Restriction and shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property or any portion thereof is conveyed. Any such deed purporting to convey any portion of the Property or interest therein without including this Restriction in full or by reference shall be deemed and taken to include said Restriction in full even though said Restriction is not expressly described or referenced therein.

31. No amendment or release of this Restriction shall be effective unless it has been approved in writing by the Municipality acting by its Planning Board (hereinafter the "Town Approval"), and said amendment or release and the requisite Town Approval have been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

32. Mortgagee Consent and Subordination. To the extent that there are any mortgages or other liens encumbering the Premises and recorded with the Essex North District Registry of Deeds (the "Registry") prior to the date and time of the recording with the Registry of this Affordable Housing Restriction, Declarant represents and warrants that it has obtained the consent and subordination of such existing mortgagees and lienholders of the Project to the execution and recording of this Restriction and to the terms and conditions hereof, that all such mortgagees and lienholders have executed a consent and subordination to this Restriction, and that all such consents and subordinations shall be recorded simultaneously herewith. Any properly executed and recorded subordination shall also be evidence of mortgagee and lienholder consent.

33. Documentary Stamps. No documentary stamps are required as this Affordable Housing Restriction is not being purchased by the Municipality.

[Remainder of page intentionally blank. Signatures follow.]

Executed under seal as of this 28<sup>th</sup> day of February, 2019.

DECLARANT:

CSH ANDOVER, LLC, a Delaware limited liability company

By: 

Name: Joseph McElwee

Title: Authorized Real Estate Signatory

Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 28th day of February, 2019, before me, the undersigned Notary Public, personally appeared Joseph McElwee, Authorized Signatory for CSH Andover, LLC proved to me through satisfactory evidence of identification, which was that he is personally known to me to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as its Authorized Real Estate Signatory of CSH Andover LLC, and that he has the authority to sign in that capacity.

  
Notary Public

My Commission Expires:



**JOHN T. SMOLAK**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 28, 2019

ACCEPTANCE OF RESTRICTION BY MUNICIPALITY

The above Affordable Housing Restriction is accepted this 12<sup>th</sup> day of March, 2019.

TOWN OF ANDOVER

By: [Signature]

By: [Signature]

By: [Signature]

By: [Signature]

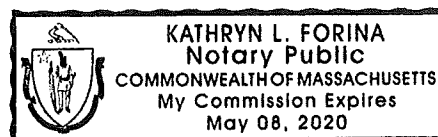
By: \_\_\_\_\_  
As Planning Board Members

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 12<sup>th</sup> day of March, 2019, before me, the undersigned Notary Public, personally appeared Zachary Bergeron, Vincent Chiozzi, Joan Duff, Ann Knowles, who proved to me through satisfactory evidence of identification, which were Personally Known to Me to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Kathryn L. Forina  
Notary Public  
My Commission Expires: May 8, 2020



ACCEPTANCE BY BOARD OF SELECTMEN

The Board of Selectmen of the Town of Andover hereby accepts the foregoing conveyance to the Town of Andover.

EXECUTED as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Town of Andover Board of Selectmen

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Essex County, ss \_\_\_\_\_, 2019

On this day, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as \_\_\_\_\_ of the Town of Andover.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### Property Description

The land with any buildings and improvements thereon in said Town of Andover, Essex County, Commonwealth of Massachusetts, shown as Lot 1, Lot 2, and Lot 3 on a plan entitled, "Plan of Land, Special Permit & Definitive Subdivision Plans, CSH of Andover, MA," drawn by Marchionda & Associates, LP, dated June 5, 2015 and recorded with the Essex County North District Registry of Deeds on May 17, 2017 as Plan No. 17601.

Being the same premises conveyed by Deed recorded with said Essex North District Registry in Book 15262, Page 113.

**Exhibit B**

Stone Hill at Andover

Affordable Units

<b>Apartment Number</b>	<b>Approx. Square Feet</b>	<b>Level of Affordability (as defined under Para. 10)</b>
# AF-1	238	Low
# AF-2	252	Low
# AF-3	252	Low
# AF-4	252	Moderate
# AF-5	257	Moderate
# AF-6	260	Moderate
# AF-7	262	Moderate
# AF-8	272	Moderate
# AF-9	275	Moderate
# AF-10	279	Moderate
# AF-11	365	Upper-Moderate
# AF-12	365	Upper-Moderate
# AF-13	370	Upper-Moderate
# AF-14	370	Upper-Moderate

Number of Affordable Units                      14

A similarly sized alternate Unit may be substituted as necessary from time to time to fulfill the requirements under this Agreement, as more particularly set forth in this Agreement.



## **EXHIBIT C**

### Initial Maximum Monthly Rents, Affordable Units

Re: Stone Hill

#### Initial Maximum Monthly Rents for Affordable Units

##### Rental Rates

Low Tier Rent:	\$3,059.00
Moderate Tier Rent:	\$3,860.00
Upper-Moderate Tier Rent:	\$5,098.00

**SUBORDINATION AND CONSENT**

The undersigned, Wells Fargo Bank, National Association, having a mailing address at 1750 H Street, NW, 5th Floor, Washington, DC 20006, being the holder of a Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated October 11, 2017 and recorded with the Essex County North District Registry of Deeds at Book 15262, Page 115 (the "Mortgage"), does hereby consent to the execution and grant of that certain Declaration of Affordable Housing Restriction (the "Affordable Housing Restriction"), recorded herewith and prior hereto, by CSH Andover, LLC in favor of the Town of Andover, Massachusetts, and does hereby further subordinate said Mortgage and its interests thereunder, to the said Affordable Housing Restriction, if and as though said Affordable Housing Restriction had been executed and recorded prior to the Mortgage.

Executed under seal as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

Wells Fargo Bank, National Association

By: 

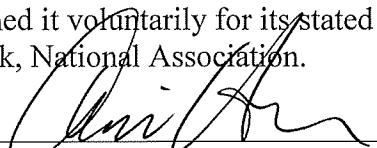
Name: Melissa W Hilton

Title: Senior Vice President

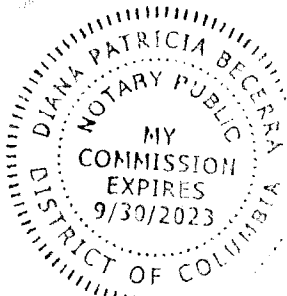
**DISTRICT OF COLUMBIA**

On this 7 day of February, 2019, before me, the undersigned notary public, personally appeared Melissa Hilton, proved to me through satisfactory evidence of identification, which was ☐ driver's license, ☒ personally known to me, or ☐ personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, in his/her capacity as SVP of Wells Fargo Bank, National Association.


SEAL

  
Notary Public

My commission expires:



{00127155;v4}20

District of Columbia: SS  
Subscribed and Sworn to before me  
this 7 day of February, 2019  
  
DIANA PATRICIA BECERRA, Notary Public, D.C.  
My commission expires September 30, 2023

## DECLARATION OF AGE RESTRICTION COVENANT

This Age Restriction Covenant (the “**Covenant**”) is made as of the 28th day of February, 2019 by CSH ANDOVER, LLC, a Delaware limited liability company with a principal place of business at 1275 Pennsylvania Avenue, N.W., Second Floor, Washington, D.C. 20004 (“**CSH**” or the “**Declarant**”), for the benefit of the Town of Andover, a Massachusetts municipal corporation acting by and through its Planning Board (the “**Planning Board**”) with a usual place of business at Andover Town Office building at 36 Bartlet Street, Andover MA 01810 (“**Andover or Town**”), with respect to the following:

### RECITALS

WHEREAS, CSH is the owner of that certain parcel of land located in Andover, Massachusetts, known as 141 Elm Street, which property is identified as Andover Assessor's Map 21, Lot 139 as more particularly described in a Deed recorded with the Essex North District Registry of Deeds in Book 15262, Page 113, and being more particularly shown as Lot 2 (the “**Property**”) on a Plan entitled “Plan of Land, Definitive & Subdivision Plans, CSH of Andover, MA,” dated June 5, 2015, prepared by Marchionda & Associates, recorded with Essex North District Registry of Deeds as Plan #17601;

WHEREAS, Declarant intends to construct a 96 unit assisted living facility for the elderly pursuant to Section 7.4 of the Town of Andover Zoning Bylaw on the Property to be known as “Stone Hill at Andover”);

WHEREAS, the Project is to consist of a Project including a total number of 96 assisted living units for the elderly (the “**Units**”);

WHEREAS, the Andover Planning Board, following notice and public hearing, approved a Special Permit pursuant to Section 7.4 of the Andover Zoning Bylaw, namely Decision: SP14-09 which was issued on July 23, 2015 and filed that date with the Andover Town Clerk’s Office and is recorded with Essex North District Registry of Deeds in Book 15084, Page 88 (the “**Special Permit**”);

WHEREAS, Section 7.4 of the Andover Zoning Bylaw provides for the granting of special permits for assisted living for the elderly, which Section 10 of the Zoning Bylaw defines as a person who is 55 years of age or older;

WHEREAS, the Town and the Declarant desire for the Declarant to make and record a Restrictive Covenant on the Property to comply with the age restrictions on the Project required by the Zoning Bylaw; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to comply with the provisions of the Town of Andover Zoning Bylaws and the Special Permit, Declarant does, for itself and its successors and assigns hereby forever covenant and agree for the benefit of the Town, acting through its Planning Board, and for the benefit of all future owners of the Property as follows:

1. In accordance with the Town of Andover Zoning Bylaw, Declarant hereby forever declares, covenants and agrees for the benefit of the Town, acting through its Planning Board, and for the benefit of all future owners of the Property that all Units within the Project regardless of form of ownership or whether or not the Units are condominium units or held in any other form of ownership or whether or not the Units are rental units, condominium units or held in any other form of ownership, shall require all residents have attained the age of 55 years of age or older.

2. Declarant does hereby declare, represent, covenant and warrant as follows:

(a) Declarant (i) is a limited liability company duly organized under the laws of the State of Delaware and is qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration of Restrictive Covenant.

(b) The execution and performance of this Covenant by Declarant (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) Declarant has good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance which would prevent use of the Property for the Project or which would prevent the execution and recording of this Covenant.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of Declarant, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Covenant).

3. This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and consented to in writing by Declarant and the Town acting by its Planning Board. The invalidity of any clause, part, or provision of this Covenant shall not affect the validity of the remaining portions hereof.

4. The Declarant agrees to file this Covenant with the Essex North Registry of Deeds, and to forward recorded copies of this Covenant to the Planning Board within thirty (30) days of recording.

5. This Covenant shall be binding upon and inure to the benefit of the owner of the Property, the owners, lessees, and occupants of Units in the Property, and any successors in interest to the Property, it being the express intention and understanding and agreement that this Declaration of Age Restriction Covenant shall constitute a covenant running with the land. Each and all of the covenants and provisions of the Covenant shall be incorporated by reference into and shall be referenced in all future deeds for all Units in the Property.

6. This Covenant shall also be and is for the benefit of the Town, its successors and assigns.

7. Subject to Section 14, this Covenant shall run with the Property in perpetuity from the date of recordation in the Essex North District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership or other interest in said Property or claiming to have an interest with respect to said Property as tenants, invitees, licensees or otherwise, and all of the respective heirs, successors, grantees, mortgagees, assigns, agents, contractors, subcontractors and employees of the foregoing. Subject to Section 14, this Covenant is hereby intended and declared to be a covenant in perpetuity held by a governmental body as defined in and with the benefit of M.G.L. c. 184, § 32 and no re-recordation of this Declaration of Covenant under G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority thereof and Declarant and its successors and assigns, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Covenant and shall not, in any enforcement action, raise the invalidity of any provision of this Covenant.

8. This Covenant shall not be modified, amended, changed, or terminated or waived without the consent of the Declarant (or Declarant's successor) and the consent of the Town. The Declarant as well as the Town, may enforce and, if necessary, extend this

Covenant in accordance with applicable law. Declarant agrees for itself, and its heirs, successors and assigns to execute and record such notices of restriction as are required to extend this Covenant in perpetuity in accordance with applicable law. The Town is hereby declared to be a benefited party to and a holder of this Covenant and the Declarant hereby appoints the Town as its attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf, including, but not limited to any notice or instrument which may at any time be necessary to maintain this Covenant in effect in perpetuity. Without limiting the forgoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town.

9. The Town shall have the authority and right to enforce this Covenant as a benefited party. The Town shall have the right to enter the Property in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Property to determine compliance with this Declaration of Covenant; (ii) enforcing this Declaration of Covenant. The Town shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Covenant to enjoin them from so doing and to cause any such violation to be remedied, after providing written notice to such party or parties and the Town shall recover its attorney's fees and costs in any action of enforcement.

10. If any court or other tribunal of competent jurisdiction determines that any provision of this Covenant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

11. Any election by the Town as to the manner and timing of its right to enforce this Covenant or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

12. Declarant and Declarant's successors and assigns, including all subsequent owners of the Property or portions thereof, shall inform a potential purchaser, tenants or lessees in writing of this Declaration of Covenant and shall incorporate this Declaration of Covenant, in full or by reference, into all future deeds for all Units in the Property. Any such instrument purporting to convey any portion of the Property or interest therein without including this Restriction in full or by reference shall be deemed and taken to include said Restriction in full even though said Restriction is not expressly described or referenced therein.

13. No amendment or release of this Covenant shall be effective unless it has been approved in writing by the Town acting by its Planning Board (hereinafter the "Town

Approval”) and said amendment or release and the requisite Town Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

14. Declarant intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Covenant and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the duration of this Covenant, and are binding upon Declarant successors in title, (ii) are not merely personal covenants of Declarant, and (iii) shall bind Declarant, its successors and assigns and inure to the benefit of Andover and its successors and assigns for the for the duration of this Covenant. Declarant hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts required to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full. The Duration of this Covenant shall be for so long as the Property is operated as an assisted living facility in conformity with the provisions of Section 7.4 (Elderly Housing) of the Town of Andover Zoning Bylaw (2014 version).

15. To the extent that there are any mortgages or other liens encumbering the Property and recorded with the Essex North District Registry of Deeds (the “Registry”) prior to the date and time of the recording with the Registry of this Declaration of Age Restriction Covenant, Declarant represents and warrants that it has obtained the consent and subordination of such existing mortgagees and lienholders of the Project to the execution and recording of this Restriction and to the terms and conditions hereof, that all such mortgagees and lienholders have executed a consent and subordination to this Restriction, and that all such consents and subordinations shall be recorded simultaneously herewith.

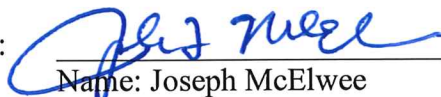
[Signature page follows]

Executed as a sealed instrument as of the date first above written.

Declarant:

CSH ANDOVER, LLC, a Delaware limited liability company

By:



Name: Joseph McElwee

Title: Authorized Real Estate


Signatory

Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 28th day of February, 2019, before me, the undersigned Notary Public, personally appeared Joseph McElwee, Authorized Signatory for CSH Andover, LLC proved to me through satisfactory evidence of identification, which was that he is personally known to me to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as its Authorized Real Estate Signatory of CSH Andover LLC, and that he has the authority to sign in that capacity.

  
Notary Public

My Commission Expires:



**JOHN T. SMOLAK**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 28, 2019



ACCEPTANCE OF RESTRICTION BY PLANNING BOARD

The above Declaration of Age Restriction Covenant is accepted this 12<sup>th</sup> day of March, 2019.

TOWN OF ANDOVER, by and through its Planning Board

By: [Signature]

By: [Signature]

By: [Signature]

By: Ann Knowles

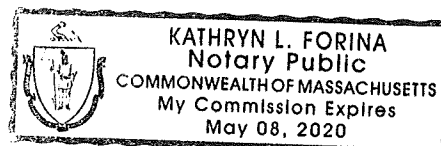
By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 12<sup>th</sup> day of March, 2019, before me, the undersigned Notary Public, personally appeared Zachary Bergeron, Vincent Chiozzi, Jean Duff, Ann Knowles, who proved to me through satisfactory evidence of identification, who were Personally Known to Me to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Kathryn L. Forina  
Notary Public  
My Commission Expires: May 8, 2020



APPROVAL OF BOARD OF SELECTMEN

We, the undersigned Board of Selectmen of the Town of Andover, Massachusetts, accept the foregoing Age Restriction Covenant for the benefit of the Town of Andover.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019 before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Andover Board of Selectmen, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in the capacity indicated, and that he has the authority to sign in that capacity.

\_\_\_\_\_

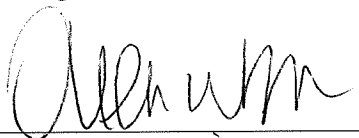
Notary Public

**SUBORDINATION AND CONSENT**

The undersigned, Wells Fargo Bank, National Association, having a mailing address at 1750 H Street, NW, 5th Floor, Washington, DC 20006, being the holder of a Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated October 11, 2017 and recorded with the Essex County North District Registry of Deeds at Book 15262, Page 115 (the "Mortgage"), does hereby consent to the execution and grant of that certain Declaration of Age Restriction Covenant (the "Age Restriction"), recorded herewith and prior hereto, by CSH Andover, LLC in favor of the Town of Andover, Massachusetts, and does hereby further subordinate said Mortgage and its interests thereunder, to the said Easement Agreement, if and as though said Easement Agreement had been executed and recorded prior to the Mortgage.

Executed under seal as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

Wells Fargo Bank, National Association

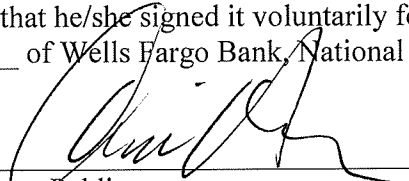
By:   
Name: Melissa W Hulton  
Title: Senior Vice President

**DISTRICT OF COLUMBIA**

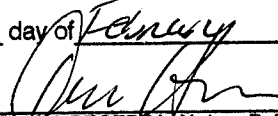
On this 11 day of February, 2019, before me, the undersigned notary public, personally appeared Melissa W. Hulton proved to me through satisfactory evidence of identification, which was ☐ driver's license, ☒ personally known to me, or ☐ personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, in his/her capacity as SVP of Wells Fargo Bank, National Association.

SEAL



  
Notary Public

My commission expires:

District of Columbia: SS  
Subscribed and Sworn to before me  
this 11 day of February, 2019  
  
DIANA PATRICIA BECERRA, Notary Public, D.C.  
My commission expires September 30, 2023

January 25, 2019

Mr. Andrew P. Flanagan  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810

RE: Sewer Use Agreement

Dear Mr. Flanagan:

I represent Dascomb Road Limited Partnership which owns certain improved commercial real property located at 160 Dascomb Road in Andover. The improvements on this property are primarily located in Andover but pursuant to various existing intermunicipal and private agreements is served by Tewksbury's sanitary sewer system ultimately being treated in Lowell's wastewater treatment facility, with a daily limit of 7,500 GPD. Attached please find three (3) originals of a certain final and partially executed Sewer Use Agreement (the "Sewer Use Agreement") forwarded to me by Charles Zaroulis, Town Counsel to the Town of Tewksbury. In sum, my client and the Town of Tewksbury have negotiated and executed this Sewer Use Agreement providing for an extension of the term of existing agreements commencing on the expiration date of existing agreements (ie. August 31, 2024) and expiring on the later to occur of June 30, 2037 or existing intermunicipal agreements (as further discussed in the attached agreement). My client undertook this negotiation given the existing agreements expire in seven (7) years and its desire to assure future sewer capacity to this property. This Sewer Use Agreement has been fully negotiated over a period of several months between my client, Attorney Zaroulis and Tewksbury Town Officials with the goal of creating a well drafted agreement addressing all issues related to this ongoing contractual arrangement. My purpose in sending these agreements to you is to request that you and the Chairman of the Board of Selectman, after ample time to review and consider, execute same. While the Town of Andover has a limited role in these existing series of agreements providing public sewer access to this property through infrastructure provided by abutting municipalities, they are an existing party to certain private agreements referenced in the Sewer Use Agreement, and thus its consent is being requested and is appropriate, as is the consent of the City of Lowell for similar reasons. I would be happy to meet with you and/or the Board of Selectman to further discuss this request and the underlying Sewer Use Agreement at your convenience.

## Tonia Magras

---

**From:** Thomas Urbelis <tju@uf-law.com>  
**Sent:** Saturday, March 16, 2019 9:05 AM  
**To:** Tonia Magras  
**Cc:** Andrew Flanagan; Michael Lindstrom; Patrick Lawlor  
**Subject:** FW: Sewer Use Agreement-160 Dascomb Road

Toni.....When this matter is placed on the Selectmen's agenda, please include this email in the Selectmen's packet. Thanks.

Tom

---

**From:** Arthur Martineau [mailto:amartineau@andoverma.gov]  
**Sent:** Wednesday, February 20, 2019 11:12 AM  
**To:** Thomas Carbone; Thomas Urbelis; Christopher Cronin; Chris Clemente  
**Cc:** Carol McGravey  
**Subject:** RE: Sewer Use Agreement

Hi Tom,

DPW is satisfied with the document. It reconciles with our records of what the allowable usage is for that particular parcel and how that usage was obtained. And, like Tom Carbone, we appreciate the delineation of ownership up to the "Vikor" manhole in Dascomb Rd.

Thanks,

*Art Martineau  
Acting Town Engineer  
Engineering Division  
Department of Public Works  
397 Lowell Street  
Andover, MA 01810-4416  
Tel: 978-623-8772*

**From:** Thomas Carbone  
**Sent:** Wednesday, February 20, 2019 8:37 AM  
**To:** Thomas Urbelis <tju@uf-law.com>; Christopher Cronin <ccronin@andoverma.gov>; Arthur Martineau <amartineau@andoverma.gov>; Chris Clemente <cclemente@andoverma.gov>  
**Cc:** Carol McGravey <chm@uf-law.com>  
**Subject:** RE: Sewer Use Agreement

I looked through this this morning and don't have any concerns. It looks like the document (on page 3) describes the sewer connection accurately, and states that for the purpose of the agreement, Smith & Nephew has a responsibility to maintain the sewer system from their foundation through the receiving manhole and beyond; being clear as to who must maintain what sections of a private sewer has always been one of my concerns, but I think this is adequate.

Thomas G. Carbone

Director of Public Health  
36 Bartlet St.  
Andover, MA 01810

Tel. : 978-623-8640  
Fax: 978-623-8694

**From:** Thomas Urbelis [<mailto:tju@uf-law.com>]

**Sent:** Wednesday, February 13, 2019 3:37 PM

**To:** Christopher Cronin <[ccronin@andoverma.gov](mailto:ccronin@andoverma.gov)>; Arthur Martineau <[amartineau@andoverma.gov](mailto:amartineau@andoverma.gov)>; Thomas Carbone <[tcarbone@andoverma.gov](mailto:tcarbone@andoverma.gov)>; Chris Clemente <[cclemente@andoverma.gov](mailto:cclemente@andoverma.gov)>

**Cc:** Carol McGravey <[chm@uf-law.com](mailto:chm@uf-law.com)>

**Subject:** Sewer Use Agreement

Did not know if you have seen these documents.

## SEWER USE AGREEMENT

THIS SEWER USE AGREEMENT (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between DASCOMB ROAD LIMITED PARTNERSHIP, a Delaware limited partnership ("**160 Dascomb Road Owner**"), the TOWN OF TEWKSBURY, MASSACHUSETTS, a municipality located in the Commonwealth of Massachusetts, having an address of 1009 Main Street, Tewksbury, Massachusetts 01876 ("**Tewksbury**"), the TOWN OF ANDOVER, MASSACHUSETTS, a municipality located in the Commonwealth of Massachusetts, having an address of 36 Bartlett Street, Andover, Massachusetts 01810 ("**Andover**"), and with the consent of the CITY OF LOWELL, MASSACHUSETTS, having an address of 375 Merrimack Street, Lowell, Massachusetts 01852 ("**Lowell**"). Dascomb Road, Andover and Tewksbury are sometimes individually referred to herein as a "Party" and collectively as the "Parties" as the context may require.

### RECITALS

WHEREAS, pursuant to that certain Quitclaim Deed dated December 11, 2016 from Smith & Nephew, Inc. (f/k/a Smith & Nephew Endoscopy, Inc. ("**Smith & Nephew**") to Dascomb Road, which Quitclaim Deed is recorded with the Essex North District Registry of Deeds at Book 10542, Page 16 and also recorded with the Middlesex North Registry of Deeds at Book 20802, Page 36, 160 Dascomb Road Owner is the current fee owner of the certain improved real property commonly known and numbered as 160 Dascomb Road, Andover, Essex County, Massachusetts and 1635 Shawsheen Street, Tewksbury, Middlesex County, Massachusetts (the "**Property**"), as more fully depicted on Exhibit "A" attached hereto (the "**Site Plan**"); and

WHEREAS, Tewksbury's Sanitary Sewer System (the "**Tewksbury Sewer System**") is connected to the wastewater treatment system owned and operated by Lowell (the "**Lowell Wastewater Treatment System**") pursuant to a written agreement between Tewksbury and Lowell (the "**Lowell-Tewksbury Sewer Agreement**") which agreement is coterminous with the IMA and presently terminates on June 30, 2037; and

WHEREAS, Lowell has implemented a pretreatment program to control discharges from all industrial users of the Lowell Wastewater Treatment System pursuant to 40 C.F.R. Part 403; and

WHEREAS, both Tewksbury and Andover have each adopted Lowell's Industrial Sewer Use Rules and Regulations which subject the Property and other users who are located within the Town of Andover and who contribute wastewater to the Lowell Wastewater Treatment System to the required pretreatment controls; and



WHEREAS, pursuant to that certain Agreement dated May 31, 1988 by and between Tewksbury and Brockway-Smith Company (the "**1988 Brockway Smith/Sebago Agreement**"), Tewksbury allocated to Brockway-Smith the right to connect into the Tewksbury Sewer System with a usage limitation of 20,000.00 gallons per day; and

WHEREAS, pursuant to Paragraph 2 of that certain Agreement dated August 31, 1998 entered into by and among Tewksbury, Andover, and Vicor Corporation, a Delaware corporation ("**Vicor**"), which Agreement is recorded with the Essex North District Registry District of the Land Court as Document Number 68717 as noted on Certificate Number 12678 in Registration Book 97, Page 317 (together with all amendments, extensions, restatements and modifications thereto, the "**Original Vicor Sewer Use Agreement**"), 160 Dascomb Road Owner as the successor-in-title to Smith & Nephew and current fee owner of the Property, is entitled (by virtue of an assignment agreement between Vicor and Smith & Nephew with respect to such rights) to extend, connect to and use the Tewksbury Sewer System in connection with 160 Dascomb Road Owner's ownership of the Property for sewage and/or wastewater discharge of up to five thousand (5,000) gallons per day; and

WHEREAS, pursuant to that certain Partial Assignment of Agreement/License dated October 2, 1997 (the "**Brockway Smith/Sebago Sewer Rights Assignment Agreement**") by and between Brockway-Smith Company and Sebago-Andover Realty Trust, as assignors ("**Brockway Smith/Sebago**"), and Smith and Nephew, as assignees, 160 Dascomb Road Owner, as the successor-in-title to Smith & Nephew, is entitled (by virtue of an assignment agreement between Brockway Smith/Sebago and Smith & Nephew with respect to such rights as originally granted to Brockway Smith/Sebago under the 1988 Brockway Smith Agreement) to extend, connect and use the Tewksbury Sewer System in connection with 160 Dascomb Road Owner's ownership of the Property for sewage and/or wastewater discharge of up to two thousand five hundred (2,500) gallons per day; and

WHEREAS, by virtue of that certain Agreement dated July 26, 1999 (the "**1999 Brockway Smith/Sebago Agreement**") by and between Sebago Andover Realty Trust, Tewksbury, and Andover, and in conjunction with the subdivision of the existing parcel owned by Sebago Andover Realty Trust (which entire parcel was subject to the 1988 Brockway Smith Agreement) and creation of a 9.247 acre subdivided parcel located at 150 Dascomb Road, Andover, MA 01810 (the "**150 Dascomb Road Parcel**"), the 150 Dascomb Road Parcel was granted the right to connect into the Tewksbury Sewer System with a usage limitation of 5,000.00 gallons per day, which allocation was deducted from the maximum usage limitations allocated to the entire subdivided lot under the 1988 Brockway Smith Agreement (resulting in such lot being presently allocated maximum sewage and/or wastewater discharge limitations of 12,500.00 gallons per day); and



WHEREAS, pursuant to the Original Vicor Sewer Use Agreement and Brockway Smith/Sebago Sewer Rights Assignment Agreement, 160 Dascomb Road Owner is entitled to extend, connect and use the Tewksbury Sewer System by and through the 160 Dascomb Road Sewer Connection, for total sewage and/or wastewater discharge of up to, and not to exceed, seven thousand five hundred (7,500) gallons per day; and

WHEREAS, Tewksbury and Andover (approved by Lowell) have entered into a sewer Intermunicipal Agreement dated August 31, 1998 (the “**IMA**”) which allows users located in Andover to extend, connect and use the Tewksbury Sewer System, as subject to Lowell's Industrial Sewer Use Rules and Regulations and the Lowell-Tewksbury Sewer Agreement; and

WHEREAS, the Property is presently connected to (and uses) the Tewksbury Sewer System by and through a sewer extension connection infrastructure connected at the rear of the existing building on the Property with sewer discharge/ wastewater initially discharged into a pumping chamber located at the rear of said building on the Property and then pumped through a dedicated forcemain system as depicted on the Site Plan as “FM” running easterly along the Property until intersecting with Smith Drive, thence northerly along Smith Drive to the intersection with Dascomb Road to a sanitary sewer manhole as depicted on the attached SMH plan as Exhibit “B” (the “**SMH Plan**”), thence westerly to the sanitary sewer manhole immediately past utility pole 77-13 along Dascomb Road as shown on said plan (with such sanitary sewer manhole shared with an abutting property owner, thence crossing diagonally underneath Dascomb Road through a sanitary sewer manhole underneath the roadway and ending in a sanitary sewer manhole on the opposite side of this roadway to the designated “Existing SMH” on the northerly side of Dascomb Road per the SMH Plan (with such “Existing SMH” being defined herein as the “**Northern Dascomb Road SMH**”), and ultimately discharging into the Tewksbury Sewer System. For purposes of this Agreement, the portion of the sewer extension and/or infrastructure serving the Property for the benefit of the 160 Dascomb Road Owner ( i.e. running from the existing building on the Property and running along and underneath Dascomb Road to the Northern Dascomb Road SMH per the SMH Plan shall be referenced as the “**160 Dascomb Road Sewer Connection**” with the remainder of the sewer extension system connected thereto (i.e. the portion running from the Northern Dascomb Road SMH and ultimately entering the Tewksbury Sewer System) excluded therefrom.

WHEREAS, pursuant to the terms of the Original Vicor Sewer Use Agreement, the Original Sewer Vicor Use Agreement is scheduled to expire on or before August 31, 2023; and

WHEREAS, the Parties desire to enter into this Agreement to evidence 160 Dascomb Road Owner's (and any future owner of the Property) continued and uninterrupted rights to extend, connect and use the Tewksbury Sewer System, by and through the 160 Dascomb Road Sewer Connection, and discharge wastewater to the Lowell Wastewater Treatment System after the expiration of the Original Vicor Sewer Use Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

5. If I/I has been found to enter any portion of the 160 Dascomb Road Sewer Connection, 160 Dascomb Road Owner shall be required to submit to Tewksbury and Andover, within 160 Dascomb Road Owner's five-year report, the sources of I/I and a program and schedule to eliminate the flow. The plan shall (a) provide for the identification and elimination of sources of groundwater and stormwater infiltration as well as other sources of inflow, (b) address inflow and infiltration which occurs as a result of, among other things, defects in pipes, manholes or the sewer system,

4. 160 Dascomb Road Owner will investigate and submit a report to Tewksbury regarding the amount of I/I into the Tewksbury Sewer System through the 160 Dascomb Road Sewer Connection every (5) five years unless there is an event that Tewksbury determines, in its reasonable discretion, requires an earlier investigation. The cost of the investigation and report shall be borne by the 160 Dascomb Road Owner. Tewksbury and Andover shall have the right at all times to investigate the amount of I/I into any portion of the 160 Dascomb Road Sewer Connection. 160 Dascomb Road Owner shall be responsible to remove all sources of I/I from the 160 Dascomb Road Sewer Connection. [THIS IS ADDED PROVISION TO CONFIRM MAXIMUM GPD PER EXISTING AGREEMENTS WITH ADDED PROVISIONS AS REQUESTED BY TEWKSBURY]

3. 160 Dascomb Road Owner shall determine and certify to Tewksbury and Andover upon request that there is and will be no well water or unmetered sources of flow/sewage that will be discharged into the Tewksbury Sewer System through the 160 Dascomb Road Sewer Connection from the Property. Any well water or unmetered sources of flow/sewage entering the Tewksbury Sewer System through the 160 Dascomb Road Sewer Connection will constitute a source of Infiltration and/or Inflow (I/I). [THIS IS ADDED PROVISION TO CONFIRM MAXIMUM GPD PER EXISTING AGREEMENTS WITH ADDED PROVISIONS AS REQUESTED BY TEWKSBURY]

2. 160 Dascomb Road Owner shall by virtue of this Agreement have the right to a usage capacity of a maximum flow of 7,500 gallons per day as determined by Massachusetts Department of Environmental Protection Regulations Title V design flow calculations (310 CMR 15.203) ("Maximum Capacity"). The wastewater and/or sewer flow generated by the Property and discharged into the Tewksbury Sewer System, by and through the 160 Dascomb Road Sewer Connection, shall not contain any "Industrial Waste" or "Industrial Wastewater" as defined by 314 CMR 7.02. [THIS IS ADDED PROVISION TO CONFIRM MAXIMUM GPD PER EXISTING AGREEMENTS WITH ADDED PROVISIONS AS REQUESTED BY TEWKSBURY]

1. 160 Dascomb Road Owner is hereby authorized, at its sole cost and expense, to maintain its connection to and use of the Tewksbury Sewer System by and through the 160 Dascomb Road Sewer Connection in association with its ownership of the Property. [NOTE, THIS TIES OUT TO PARA. 1 USE PROVISIONS UNDER ORIGINAL VICOR SEWER USE AGREEMENT]

stormwater, surface water, groundwater, roof run off or subsurface drainage. Documentation of the volume, location and work completed relative to I/I shall be provided after work to eliminate flows have been completed. **[THIS IS ADDED PROVISION TO CONFIRM MAXIMUM GPD PER EXISTING AGREEMENTS WITH ADDED PROVISIONS AS REQUESTED BY TEWKSBURY]**

6. Any and all grease trap regulations promulgated by the Tewksbury Board of Health and the Andover Board of Health are incorporated herein by reference. The 160 Dascomb Road Owner shall fully comply with the more stringent grease trap regulations as between the Tewksbury and Andover as such regulations relate to the installation and maintenance of any trap which may be required. **[THIS IS ADDED PROVISION TO CONFIRM MAXIMUM GPD PER EXISTING AGREEMENTS WITH ADDED PROVISIONS AS REQUESTED BY TEWKSBURY]**
7. The 160 Dascomb Road Owner shall fully comply with any applicable sewer use rules and regulations which may be adopted from time to time by Tewksbury, Andover or Lowell during the term of this Agreement, as the same may be revised or amended from time to time. The 160 Dascomb Road Owner acknowledges that Tewksbury, Andover, and Lowell are authorized to enforce all applicable Sewer Use Rules and Regulations. The 160 Dascomb Road Owner acknowledges and recognizes the rights and obligations of the municipalities as set forth in the IMA. The terms of said IMA are incorporated herein by reference. **[THIS EXPANDS UPON PROVISIONS UNDER PARAGRAPHS 4 -6 OF ORIGINAL VICOR SEWER USE AGREEMENT]**
8. The 160 Dascomb Road Owner agrees to indemnify, defend and hold harmless Andover, Tewksbury, and/or Lowell, their agents, employees, attorneys, officers and directors from and against any and all liabilities, claims, penalties, fines, forfeitures, suits, judgments, administrative proceedings, actions, debts, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which may be brought against Andover, Tewksbury and/or Lowell or which the municipalities may incur, become responsible for, or pay out as the result of (i) death or bodily injury to any person, (ii) destruction or damage to any property or (iii) any violation or alleged violation of any governmental law or regulation, all caused in whole or in part by or resulting from the acts of the 160 Dascomb Road Owner, its officers, employees, contractors or agents in conjunction with the 160 Dascomb Road Sewer Connection or otherwise arising out of or related to the performance of this Agreement. The 160 Dascomb Road Owner shall be entitled to participate in any action, suit or proceeding brought against Andover, Tewksbury and/or Lowell under this paragraph, and to the extent it may wish to do so, to assume the defense thereof. The 160 Dascomb Road Owner shall not be responsible for any settlement or disposition of such suit or proceeding affected without its prior written consent. The 160 Dascomb Road Owner also agrees to indemnify, defend and hold harmless

11. The 160 Dascomb Road Owner represents that it has obtained and shall acquire as necessary all local, state and federal approvals or permits necessary for the 160

**[OTHERWISE]**

10. The 160 Dascomb Road Owner shall have a right to fully (and not partially) assign its rights hereunder only in the event of the sale of the entire Property, but shall not otherwise have a right to assign any such rights, or any portion thereof, absent the written consent of Andover and Tewksbury. **[THIS IS NEW PROVISION TO CONFIRM RIGHTS RUN WITH PROPERTY ON SALE BUT NOT OTHERWISE]**

9. The 160 Dascomb Road Owner pursuant to this Agreement is entitled to maintain its extension and connection to, and use, the Tewksbury Sewer System by and through the 160 Dascomb Road Sewer Connection. The rights granted to the 160 Dascomb Road Owner herein are for the express and exclusive use of the 160 Dascomb Road Owner, or any future owner of the Property, and no other party, with the intent of the Parties that the rights granted to the 160 Dascomb Road Owner shall run with the land; provided, however, none of 160 Dascomb Road Owner or any future owner of the Property shall have any right to exceed the Maximum Capacity. Wherever in this Agreement the term "160 Dascomb Road Owner" is used, it shall mean any successor-in-title to the Property unless otherwise noted. **[THIS IS VARIATION OF THE THEME SET FORTH IN PARAGRAPH 8 OF THE ORIGINAL VICOR SEWER USE AGREEMENT WITH RESPECT TO NOT EXCEEDING CAP AND RIGHTS RUNNING WITH THE LAND]**

**LOWELL (WHICH IS NOT A PARTY TO ORIGINAL AGREEMENT)**  
**AGREEMENT BUT EXPANDS UPON INDEMNITY BY INCLUDING**  
**[THIS MIRRORS PARAGRAPH 7 OF ORIGINAL VICOR SEWER USE**  
 Sewer System other than by and through the 160 Dascomb Road Sewer Connection. arising from the discharge into the Tewksbury Sewer System or Lowell Sanitary (and preserve) all rights to pursue any claims as against third parties related to or Sewer System through the 160 Dascomb Road Sewer System, and (ii) shall retain system unrelated to the discharge of wastewater and/or sewage into the Tewksbury claims arising under or related to any failure of a sewer connection infrastructure or (i) shall have no indemnification obligation under this Agreement with respect to any Notwithstanding the foregoing, the 160 Dascomb Road Owner under this Agreement alleged failure to comply with any applicable sewer use rules and regulations. against the 160 Dascomb Road Owner as the result of 160 Dascomb Road Owner's adopted or implemented by Andover and Tewksbury and/or Lowell, (ii) brought to comply with any applicable sewer use rules and regulations as promulgated, Tewksbury and/or Lowell as the result of 160 Dascomb Road Owner's alleged failure suits, actions, demands, claims or proceedings (i) brought against Andover, all liabilities, awards, judgments, costs and expenses, including attorneys' fees, for Andover, Tewksbury, and/or Lowell, its agents, employees, attorneys and officers for

Dascomb Road Sewer Connection as provided herein. **[VERBATIM  
PARAGRAPH 10 OF ORIGINAL VICOR SEWER USE AGREEMENT]**

12. All fees, costs and charges relating to the use by the 160 Dascomb Road Owner of the Tewksbury Sewer System shall be billed and collected by Tewksbury. 160 Dascomb Road Owner agrees and shall comply with any other billing, assessing, or reading arrangement which Tewksbury and Andover may enter into after the date of execution of this Agreement. 160 Dascomb Road Owner acknowledges the rights of Andover and/or Tewksbury (howsoever each of said municipalities shall agree from time to time) to bill, collect and lien for the fees, costs and charges relating to the use by 160 Dascomb Road Owner of said sanitary sewer system. In the event that Tewksbury determines that given the location of the Property (i.e. location primarily in Andover) it deems it to be in the best interest of Tewksbury to file any additional instruments in order to confirm its statutory lien rights to secure collection of all fees associated with 160 Dascomb Road Owner's use of the Tewksbury Sewer System, 160 Dascomb Road Owner shall fully cooperate with such efforts (and execute all such instruments upon request). As noted herein, the Property is located in Andover and Tewksbury, while sewer service is provided and billed by Tewksbury. Therefore, notwithstanding anything set forth herein to the contrary, (i) the obtaining and recording with the Essex North District Registry of Deeds or Middlesex North Registry of Deeds of an Andover Municipal Lien Certificate shall not release any lien or charge in favor of Tewksbury as against the Property, and (ii) any purchaser of the Property, any part thereof, must inquire of Tewksbury as to outstanding sewer usage fees or charges and make payment of the same to discharge any lien or charge against the Property, which lien and/or charging rights as against the Property shall remain with Tewksbury until such amounts are fully paid. **[THIS REFLECTS AGREED UPON BILLING PROTOCOL POST ORIGINAL VICOR SEWER USE AGREEMENT BUT LEAVES OPEN ANY FUTURE CHANGE AS BETWEEN TEWKSBURY AND ANDOVER ON BILLING. FOR NOW, I BELIEVE TEWKSBURY JUST DIRECT BILLS THIS TO MY CLIENT. NOT SURE WHETHER 5K WAS EVER PAID]**

13. 160 Dascomb Road Owner, Tewksbury and Andover hereby state and ratify that the 160 Dascomb Road Sewer Connection shall be privately owned and maintained by the 160 Dascomb Road Owner (and others, if applicable), and that neither Tewksbury nor Andover shall approve of any extension, connection or use of the 160 Dascomb Road Sewer Connection or any of its component parts without the express written prior approval of the 160 Dascomb Road Owner. The sole responsibility to operate, maintain and repair the 160 Dascomb Road Sewer Connection shall remain at all times during the term of this Agreement with the 160 Dascomb Road Owner (as subject to its rights to seek contribution from other parties). Neither Tewksbury nor Andover shall have any responsibility for the operation, maintenance and repair of the 160 Dascomb Road Sewer Connection. In the sole opinion of either Tewksbury or Andover, if 160

16. The undersigned parties confirm and agree that (i) based upon the terms and conditions of all the operative governing agreements, including, without limitation,

**VICOR SEWER USE AGREEMENT]**

15. Nothing in this Agreement is intended to grant or cause any right or permission for any other users located in Andover to connect to or use 160 Dascomb Road Sewer Connection or the Tewksbury Sewer System. The 160 Dascomb Road Owner agrees and acknowledges that it shall not allow any other user in Andover to connect to the 160 Dascomb Road Sewer Connection absent the written approval of both Tewksbury and Andover. [INTENDED TO MIRROR PARAGRAPH 14 OF ORIGINAL

**MAINTENANCE OBLIGATIONS OR FAILURE TO ABIDE BY REGS.] PROTECTS BOTH TOWNS WITH RESPECT TO ONGOING**

14. 160 Dascomb Road Owner agrees that each owner of the Property shall be liable to Andover and Tewksbury for any and all losses or costs incurred by Andover or Tewksbury due to damage to the Tewksbury Sewer System caused by any failure of 160 Dascomb Road Owner to properly maintain the 160 Dascomb Road Sewer Connection or failure to abide by any applicable Sewer Use Rules and Regulations as they relate thereto and said 160 Dascomb Road Owner's discharge of sewerage or wastewater into sewer systems of Lowell and/or the Tewksbury Sewer System, including without limitation any failure to properly comply with any requirements of the grease trap regulations of either Tewksbury or Andover; provided, however, the 160 Dascomb Road Owner shall retain (and reserve) all rights to pursue any claims as against third parties related to or arising from the discharge into the Tewksbury Sewer System or Lowell Sanitary Sewer System other than by and through the 160 Dascomb Road Sewer Connection. [THIS IS NEWLY ADDED PROVISION THAT

**REPAIR UPON FAILURE OF OWNER TO DO SO.**

**UPON LIEN RIGHTS OF EITHER TOWN IF THEY NEED TO SPEND \$\$ TO OF THE ORIGINAL VICOR SEWER USE AGREEMENT BUT EXPANDS**  
 Road SMH. [THIS PROVISION GENERALLY MIRRORS PARAGRAPH 13 the 160 Dascomb Road Sewer Connection continuing after the Northern Dascomb no obligation under this Agreement to maintain, repair, and/or replace any portion of for such cost. Notwithstanding the foregoing, 160 Dascomb Road Owner shall have then either Andover or Tewksbury shall have the right to place a lien on the Property demand for payment. If said payment is not made within fourteen (14) days of demand, Tewksbury, as the case may be, the cost of such repair within fourteen (14) days of preserving its rights to seek contribution from others) shall pay to Andover or Connection as it reasonably deems necessary, and 160 Dascomb Road Owner (while and complete such maintenance and make such repairs to the 160 Dascomb Road Sewer in its sole but reasonable discretion and without obligation to do so, enter the Property of the Andover or Tewksbury Board of Health, then either Tewksbury or Andover may, Connection is determined to be a threat to public health as determined by the Director Connection, so as to accomplish its purpose, or if the 160 Dascomb Road Sewer Dascomb Road Owner fails to maintain and repair the 160 Dascomb Road Sewer

the 1988 Brockway Smith/Sebago Agreement, the 1989 Brockway Smith/Sebago Agreement, Original Vicor Sewer Use Agreement, and the Brockway Smith/Sebago Sewer Rights Assignment Agreement, that Tewksbury shall have no obligations with respect to any portion of the sewer infrastructure located in Andover included as part of the 160 Dascomb Road Sewer Connection, and (ii) to the extent any portion of the sewer infrastructure serving any of the properties that are subject to such agreements is located in Andover but may not be otherwise included as part of the 160 Dascomb Road Sewer Sewer Connection, Tewksbury shall have no obligation with respect thereto. **[NEW LANGUAGE ADDED BY TEWKSBURY; THEY JUST WANTED CONFIRMATION NO PORTION OF THE SYSTEM LOCATED IN ANDOVER IS THEIR RESPONSIBILITY (SEE ABOVE CONFIRMATION RESPONSIBILTiy OF LAND OWNERS/USERS IN ANDOVER)]**

17. The term of this Agreement shall commence on September 1, 2024 and run concurrently with the term of the Lowell-Tewksbury Sewer Agreement and the IMA (which agreements run concurrently) and thus end on the later to occur of (i) June 30, 2037, or (ii) the expiration date of the Lowell-Tewksbury Sewer Agreement and IMA (if such agreements are subsequently extended past June 30, 2037 following the effective of this Agreement). This Agreement may be renewed or extended in writing only upon proper authorization by the Parties in accordance with applicable laws and regulations. **[TERM REPLACES PARAGRAPH 15 OF ORIGINAL VICOR SEWER USE AGREEMENT WHICH ORIGINALLY RAN 25 YEARS FROM 8/31/98 TO 8/31/2024 AND EXTENDS LATER OF 6/30/2037 OR EXPIRATION OF IMA (CURRENTLY EXPIRES 6/30/2037)]**
18. Notwithstanding anything to the contrary contained in this Agreement, if at any time during the term of this Agreement, Andover shall provide to the 160 Dascomb Road Owner the right and ability to connect to and use any sewage and/or wastewater sanitary system owned and operated by Andover, then the 160 Dascomb Road Owner shall have the unilateral right, to be exercised by the 160 Dascomb Road Owner, in its sole discretion upon not less than two (2) years prior written notice to Andover and Tewksbury, to terminate this Agreement whereupon this Agreement shall no longer be of any further force and effect and the Parties hereto shall no longer have any rights, liabilities or obligations arising under this Agreement except for any liabilities or obligations which expressly survive the termination of this Agreement, if any. If such termination notice issues, the 160 Dascomb Road Owner shall continue to use the 160 Dascomb Road Sewer Connection, as previously, for a minimum of two (2) years and shall not use any sewer and/or water sanitary system owned and operated by Andover until after such minimum two (2) year period has expired. After such minimum period, the 160 Dascomb Road Sewer Connection shall be discontinued and such connection shall be disconnected from the Tewksbury Sewer System. If the 160 Dascomb Road Owner properly exercise this early termination right, it shall fully

comply with all applicable laws and regulations, at its own cost and expense, in terminating the 160 Dascomb Road Sewer Connection. [THIS IS ENTIRELY NEW PROVISION ADDRESSING SCENARIO IF ANDOVER IN THE FUTURE EXTENDS SEWER TO THE SITE AND AFFORDS OWNER EARLY TERMINATION RIGHT WITH TWO YEAR NOTICE]

19. This Agreement shall not take effect until it is executed by all signatories listed below, including Lowell, and recorded by 160 Dascomb Road Owner with the Essex North District Registry of Deeds and the Middlesex North Registry of Deeds, respectively, and that the terms and conditions of this Agreement shall bind and inure to the benefit of and be enforceable by the Parties and their respective successors in interest. 160 Dascomb Road Owner shall deliver to Tewksbury and Andover a copy of the recorded Agreement.

20. 160 Dascomb Road Owner authorizes and grants representatives from Tewksbury, Andover and Lowell the right to enter upon the Property upon twenty-four (24) hours' prior advance notice for the sole purposes of inspecting, monitoring and sampling the 160 Dascomb Road Sewer Connection to ensure compliance with the terms and conditions of this Agreement.

21. 160 Dascomb Road Owner shall pay Tewksbury's and Andover's reasonable legal fees and costs for the preparation and/or review of this Agreement. Further, the 160 Dascomb Road Owner shall be responsible for payment of Tewksbury's and Andover's reasonable legal fees and costs for the enforcement of any of the terms or conditions of this Agreement

22. Each of the Parties covenants and agrees that the approval of this Agreement shall never be used in any forum by the 160 Dascomb Road Owner as a reason for, or basis of, a claim, argument or assertion that this Agreement is binding or a persuasive precedent for Tewksbury or Andover to approve another IMA or an amendment to this Agreement.

23. All Parties reserve the right, either in law or in equity, by suit and complaint in the nature of mandamus, or other proceeding, to enforce or compel performance of any or all covenants or agreements contained in this Agreement.

24. If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be held invalid or unenforceable, or if any agency, board, commission, or division of the Commonwealth of Massachusetts or the federal government, or any court of competent jurisdiction determines or declares any provision of this Agreement to be illegal, invalid, or unenforceable then the remainder of this Agreement or the application of such term(s) or provision(s) to persons, properties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and all remaining terms and provisions



of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. This Agreement shall be construed, and enforced, in accordance with the laws of the Commonwealth of Massachusetts, and any suits hereunder shall be filed only in the Superior Court, for Middlesex County.

{END OF AGREEMENT; SIGNATURE PAGES TO FOLLOW}

IN WITNESS WHEREOF, the undersigned have executed this Agreement Under Seal as of the date first written above.

**WITNESS:**

**DASCOMB ROAD:**

Dascomb Road Limited Partnership, a Delaware  
limited partnership  
By: Condyne Investment Partners, LLC, its  
General Partner

\_\_\_\_\_  
Print Name:  
By: \_\_\_\_\_  
Name:  
Title: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntary for its stated purpose in his/her capacity as \_\_\_\_\_ of Condyne Investment Partners, LLC, the General Partner of Dascomb Road Limited Partnership and that the foregoing constitutes the free and voluntary act and deed of Dascomb Road Limited Partnership.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My commission expires: \_\_\_\_\_

*[signatures continue on next page]*

**WITNESS:**

**TEWKSBURY:**

Town of Tewksbury

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_

Name: Richard A. Montuori

Title: Town Manager

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_

Name: Jay J. Kelly

Title: Chairman, on behalf of the Board of  
Selectmen of the Town of Tewksbury

**COMMONWEALTH OF MASSACHUSETTS**

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared Richard A. Montuori and Jay J. Kelly, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntary for its stated purpose in their respective capacities as Town Manager and Chairman of the Board of Selectmen for the Town of Tewksbury, respectively, and that the foregoing constitutes the free and voluntary act and deed of the Town of Tewksbury.

\_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

*[signatures continue on next page]*

**WITNESS:**

**ANDOVER:**

Town of Andover:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Town Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman, on behalf of the Board of  
Selectmen of the Town of Andover

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public,  
personally appeared \_\_\_\_\_ and \_\_\_\_\_, proved  
to me through satisfactory evidence of identification, which were \_\_\_\_\_,  
to be the persons whose names are signed on the preceding or attached document, and  
acknowledged to me that they signed it voluntarily for its stated purpose in their respective  
capacities as Town Manager and Chairman of the Board of Selectmen for the Town of Andover  
and that the foregoing constitutes the free and voluntary act and deed of the Town of Andover.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My commission expires: \_\_\_\_\_

By executing below, the City of Lowell consents to this Agreement.

**WITNESS:**

**CITY OF LOWELL:**

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntary for its stated purpose in his capacity as \_\_\_\_\_ of the City of Lowell and that the foregoing constitutes the free and voluntary act and deed of the City of Lowell.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My commission expires: \_\_\_\_\_

Exhibit “B”  
SMH Plan

DOCUMENT NO.

68717 ✓

Oct 27, 1998

Emax North Registry Building

Received for Registration

1 O'CLOCK 46 M P M

NOTED ON CERTIFICATE NO. 13678

IN REGISTRATION BOOK 97 PAGE 317

## AGREEMENT

This AGREEMENT is entered into this 31<sup>st</sup> day of August, 1998, by and between Vicor Corporation of Frontage Road, Andover, Massachusetts ("Vicor"), the Town of Tewksbury, Massachusetts ("Tewksbury") and the Town of Andover, Massachusetts ("Andover"). Tewksbury and Andover are all municipal corporations located in the Commonwealth of Massachusetts. Vicor, Tewksbury and Andover shall be collectively referred to as (the "Parties").

## RECITALS

WHEREAS, The City of Lowell ("Lowell") owns and operates a Wastewater Treatment System; WHEREAS, Vicor is the owner of property located on Frontage Road in Andover, Massachusetts and is also the owner by assignment of certain rights, titles, interests and licenses from Tewksbury to extend, connect and use Tewksbury's Sanitary Sewer System for properties in Andover; WHEREAS, Tewksbury has issued to Vicor a Sewer Extension and Connection Permit for a connection of approximately 6,000 gallons per day, which usage shall not contain any industrial waste as such is defined by 314 C.M.R. 7.02 as amended;

WHEREAS, Tewksbury's Sanitary Sewer System is connected to Lowell's Wastewater Treatment System; WHEREAS, Lowell has implemented a Pretreatment Program to control discharges from all industrial users of its Wastewater Treatment System pursuant to 40 CFR Part 403;

WHEREAS, Tewksbury has adopted Lowell's Industrial Sewer Use Rules and Regulations which subject Vicor and other users who are located in Andover and who contribute wastewater to Lowell's treatment system to the necessary pretreatment controls.

WHEREAS, Andover is in the process of adopting or has adopted Industrial Sewer Use Rules and Regulations which subject Vicor and other users who are located in Andover and who contribute wastewater to Lowell's treatment system to the necessary pretreatment controls;

WHEREAS, Tewksbury and Andover (approved by Lowell) have entered into an Agreement dated August 31, 1998 which allows users located in Andover to extend, connect and use Tewksbury's sewer system.

WHEREAS, the Parties wish and desire to enter into an Agreement which allows Vicor to extend and connect to the Wastewater Treatment System and which provides for the enforcement of the Rules and Regulations for Users who are located in Andover who contribute to Lowell's treatment system.



**NOW, THEREFORE,** the parties agree as follows:

1. Vicor shall be allowed, at its sole cost and expense, to extend, connect to and use Tewksbury's Sanitary Sewer System for its intended use(s) for the property located on Frontage Road known as Lots 30A, 30B, and a portion of 30T on Assessors Map 179 of Andover, Massachusetts in accordance with the application attached hereto as Exhibit A and the permits issued or to be issued for the proposed connection. The sewer flow for Vicor shall not contain industrial waste as such is defined by 314 C.M.R. 7.02, and the use as set forth on said application is for 6000.30 gpd sewer flow. For Vicor's title See Transfer Certificate No. 12678 recorded with the Essex North District Registry of Deeds, Land Registration Dept., at Book 97 Page 317.
2. Vicor agrees to transfer and/or assign to Smith & Nephew, Inc. f/k/a Smith & Nephew Endoscopy, Inc. ("Smith & Nephew") the rights, titles, interests and licenses to extend, connect and use Tewksbury's Sanitary Sewer System for its property in Andover for up the 5,000 gallon per day sewer usage in accordance with the Agreement for Partial Assignment between Vicor and Smith & Nephew.
3. As the result of the assignment and/or transfer of rights to Smith & Nephew and the approved daily gallon usage hereunder, Vicor has additional gallon per day sewer usage capacity remaining in the amount of 8,999.70 gpd as the result of the assignment from Jeffrey D. Sheehy and Augustine P. Sheehy, individually and as trustees of the Osgood Street Trust and Frontage Road Trust. This additional remaining sewer usage capacity is not the subject of this agreement. Attached hereto as Exhibit "A" and incorporated herein by reference is a copy of Vicor's application.
4. Vicor agrees that it will comply with the applicable Sewer Use Rules and Regulations promulgated, adopted and implemented by Tewksbury, Andover and Lowell as the same may be revised or amended by said municipalities.
5. Vicor acknowledges that Lowell is authorized to implement and enforce any applicable Sewer Use Rules and Regulations. Vicor acknowledges and recognizes the rights and obligations of the municipalities as set forth in a certain Agreement dated August 31, 1998 by and between Tewksbury and Andover (and approved by Lowell). The terms of said Agreement, copies of which are attached hereto as Exhibit "B" is hereby incorporated herein by reference.
6. Vicor agrees to comply with the requirements, if any, imposed upon it under the Agreement between Tewksbury and Andover (approved by Lowell) dated August 31, 1998 (hereinafter "the Agreement").

7. Vicor agrees to indemnify, defend and hold harmless Andover and Tewksbury, their agents, employees, attorneys, officers and directors from and against any and all liabilities, claims, penalties, fines, forfeitures, suits, judgments, administrative proceedings, actions, debts, cost and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees), which may be brought against Andover and Tewksbury or which the municipalities may incur, become responsible for, or pay out as the result of (i) death or bodily injury to any person, (ii) destruction or damage to any property or (iii) any violation or alleged violation of any governmental law or regulation, all caused in whole or in part by or resulting from the acts of Vicor, its officers, employees, contractors or agents in the performance of the work to extend and connect the sewer to its project(s) or arising out of or related to the performance of this Agreement. Vicor shall be entitled to participate in any action, suit or proceeding brought against Andover, Tewksbury and/or Lowell under this paragraph, and to the extent they may wish, to assume the defense thereof. Vicor shall not be responsible for any settlement or disposition of such suit or proceeding effected without its prior written consent. Vicor also agrees to indemnify, defend and hold harmless Andover and/or Tewksbury, their agents, employees, attorneys and officers for all liabilities, awards, judgments, costs and expenses, including attorneys fees for suits, actions, demands, claims or proceedings (i) brought against Andover and/or Tewksbury as the result of Vicor's alleged failure to comply with any applicable Sewer Use Rules and Regulations as promulgated, adopted or implemented by Tewksbury, Andover and Lowell, (ii) brought against Vicor by Andover as the result of Vicor's alleged failure to comply with any applicable Sewer Use Rules and Regulations, or (iii) brought against Andover and/or Tewksbury as the result of Vicor's alleged failure to comply with the terms of said Agreement attached hereto as Exhibits "B".

8. Vicor states that it is the owner by assignment of certain rights, titles, and licenses to extend, connect, and use Tewksbury's sanitary sewer system. Vicor agrees that it will not grant, convey, assign, or otherwise transfer to any individual, owner, trust, corporation, or other entity any rights, titles, and interest to extend, connect or use its sewer extension for any gallon per day usage capacity in excess of the capacity which has been or may be assigned to it. Vicor further agrees to indemnify, defend and hold Andover and Tewksbury harmless of and from any claim or action brought by any individual, owner, trust, corporation or other entity seeking to extend, connect, or use Vicor's sewer extension who or which has received an assignment from Vicor for gallon per day usage capacity in excess of the total usage capacity which has been or may be assigned to Vicor.

9. With the execution hereof Vicor represents that it has obtained all local, state and federal approvals or permits necessary for the extension, connection and use of the Sanitary Sewer System as provided herein.

10. Vicor hereby acknowledges and confirms that it has assumed and agreed to perform all of the obligations of Augustine P. Sheehy and Jeffrey D. Sheehy, d/b/a Dundee Park

Properties, Augustine P. Sheehy, Trustee of the Frontage Road Trust and Jeffrey D. Sheehy, Trustee of the Osgood Street Trust ("Sheehys") for its project(s) under a certain Agreement/License dated July of 1988 by and between the Sheehys and the Town of Tewksbury. Said Agreement/License dated July, 1988 pertains to the extension, connection and usage of Tewksbury's Sanitary Sewer System, and together with the copy of the Assignment to Vicor, is attached hereto as Exhibit "C".

11. Andover and Tewksbury hereby acknowledge the terms of the July, 1988 Agreement/license by and between Augustine P. Sheehy and Jeffrey D. Sheehy, individually, d/b/a Dundee Park Properties, and as Trustees of the Frontage Road Trust and the Osgood Street Trust, and the Town of Tewksbury pertaining to the extension, connections and usage of the Tewksbury Sanitary Sewer System and hereby ratify their authorization and permission for Vicor to extend, connect and use the said Sanitary Sewer System.
12. Upon execution of this Agreement and thereafter until July 1, 1999, all fees, costs and charges relating to the use by Vicor of Tewksbury's Sanitary Sewer System shall be billed and collected by Tewksbury. After July 1, 1999, Tewksbury shall bill Andover at the rate charged by Tewksbury for said fees, costs and charges and Andover shall thereupon bill Vicor at that rate charged by Tewksbury. Andover may include a service fee or administrative charge for participating in such billing. Andover's obligations to pay Tewksbury for said bills and charges are subject to approval and appropriation by Andover's Town Meeting. Andover shall proceed in good faith and use reasonable efforts to submit, support, and receive approval at its annual meeting to allow Andover to conduct the requirements of this paragraph, including the billing of Andover Users for the fees, costs, and charges relating to the use of Tewksbury's sanitary sewer system. Vicor agrees that it shall, and must comply with any other billing arrangement which Tewksbury and Andover may enter into after the execution of this Agreement. Vicor acknowledges the rights of Andover and Tewksbury to bill, collect and lien for the fees, costs and charges relating to the use by Vicor of said Sanitary Sewer System.

Upon execution of this Agreement, Vicor agrees to transfer to Andover the sum of \$5,000, said amount to be held by Andover in a segregated account. Said sum and any interest and accumulation thereon may be used by Andover to pay the fees, costs and charges relating to the use by Vicor of Tewksbury's Sanitary Sewer System, if said fees, costs and charges have not been paid within 60 days of billing. Andover agrees to retain said sums in a segregated interest bearing account.

13. Vicor, Tewksbury and Andover hereby state and ratify that the sewer extension and connection shall be privately owned and maintained by Vicor. Tewksbury and Andover agree that the sewer extension to be constructed by Vicor shall remain privately owned and neither Andover nor Tewksbury shall approve of any extension, connection, or use of

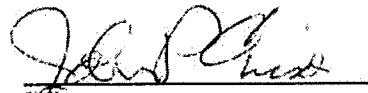
19. All parties reserve the right, either in law or equity, by suit, and complaint in the nature of the Intermunicipal Agreement dated August 21, 1998. Any future costs are provided by (approved) by Lowell dated August 21, 1998. Any future costs are provided by review and approval of this Agreement or the Agreement between Tewksbury and Andover connection, or use of Tewksbury's sanitary sewage system or related to the preparation, responsible for any attorney's fees or consulting charges for its proposed extension, Andover and Tewksbury acknowledge that as of the date of this Agreement, Vicor is not
18. Agreement.
17. Lowell the right to enter Vicor's premises with twenty-four (24) hour advance notice for purposes of inspecting, monitoring and sampling to determine compliance with this Agreement.
16. This Agreement shall be recorded in the Essex North District Registry of Deed and shall bind and inure to the benefit of and be enforceable by the parties and their respective heirs, successors and assigns.
15. The term of this Agreement shall run concurrently with the Tewksbury-Lowell Intermunicipal Agreement but the total term shall not exceed twenty-five (25) years from the date hereof and may be renewed or extended upon proper authorization by the parties hereto in accordance with applicable law.
14. Nothing in this Agreement is intended to grant or cause any right or permission for any other users in Andover to connect to or use the Tewksbury Sanitary Sewage System. Vicor agrees and acknowledges that it shall not allow any other user in Andover to connect to Vicor's sewer extension and connection without the approval by said sewer of Tewksbury and Andover.
- Vicor's extension or connection or any of its component parts without the express written prior approval of Vicor. The sole responsibility to operate, maintain and repair said sewer extension and connection shall be that of Vicor. The Town of Andover shall have no responsibility for the operation, maintenance and repair of said sewer connection and extension. In the event Vicor fails, in the sole opinion of the Town of Andover, to maintain and repair said sewer connection and extension so as to accomplish its purpose, or if said sewer connection and extension is determined to be a threat to public health by the Director of the Andover Board of Health, then the Town of Andover may, in its sole discretion and without obligation to do so, enter and do such maintenance and make such repair to the sewer connection and extension as it deems necessary, and Vicor and its successors and assigns shall pay to the Town of Andover the cost of such repair within 14 days of demand for payment. If said payment is not made within 14 days of demand, then Andover shall have the right to lien Vicor's property for said cost.

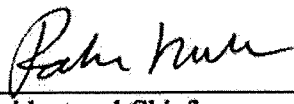
mandamus, or other proceeding, to enforce or compel performance of any or all covenants herein.

20. If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, or if any agency, board, commission, or division of the state and federal government, or any court determines or declares any provision of this Agreement to be illegal, invalid, or unenforceable then the remainder of this Agreement or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

In witness whereof, the parties hereto have executed this Agreement by their duly authorized representative(s) on this 31 day of August, 1998.

Vicor Corporation

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
its President and Chief  
Executive Officer,  
Patrizio Vinciarelli

Approved as to Form Only  
Charles J. Zaccarelli,  
Tewksbury Town Counsel  
Date: 4-3-98

*[Signature]*  
John F. Gallant  
Notary Public  
My Commission Expires: 12/1/98

Then personally appeared before me the above-named Patrizio Vinciarelli, the President and Chief Executive Officer of Vicor Corporation, and acknowledged the foregoing to be the free act and deed of said corporation, before me

Essex, ss. August 31, 1998

COMMONWEALTH OF MASSACHUSETTS

By: *[Signature]*  
Chairman, on behalf of the  
Board of Selectmen of the  
Town of Tewksbury

*[Signature]*  
Witness

By: *[Signature]*  
its Town Manager,  
David G. Cressman

*[Signature]*  
Witness

TOWN OF TEWKSBURY

By: *[Signature]*  
Chairman, on behalf of the  
Board of Selectmen of the  
Town of Andover

*[Signature]*  
Witness

By: *[Signature]*  
its Town Manager,  
Reginald Stapeczynski

*[Signature]*  
Witness

TOWN OF ANDOVER

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

August 31, 1998

Then personally appeared before me the above-named Reginald Stapczynski, the Town Manager of the Town of Andover and William P. Pappas Chairman of the Board of Selectman, and acknowledged the foregoing to be the free act and deed of Andover, before me

*Reginald Stapczynski*  
Notary Public  
My Commission Expires: April 2, 2000

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

, 1998

Then personally appeared before me the above-named David G. Cressman, the Town Manager of the Town of Tewksbury and ~~Chairman of the Board of Selectman~~ and acknowledged the foregoing to be the free act and deed of Tewksbury, before me

*Helen M. Chambers*  
Notary Public  
My Commission Expires: 3/31/00

VICOR\30A&B\MUNAGR

314 CMR: Division of Water Pollution Control  
One Winter Street  
Boston, MA 02108

7:20:

APPLICATION FOR PERMIT  
FOR

SEWER SYSTEM EXTENSION OR CONNECTION

INSTRUCTIONS

The application should be signed by the appropriate municipal official, and submitted in triplicate, with the original and one copy to the Division's Boston Office and one copy to the appropriate regional office. The signature of the design engineer or other agent will be accepted only if accompanied by a letter of authorization.

If connection is to be made to the MWRA sewerage system, indicate "MWRA" in item 11.

If the project includes sewers, pumping stations, force mains, or syphons, construction plans must be submitted with the application. If additional space is required to properly answer any questions, please attach additional sheets and refer to the attachments in the space provided.

(1) Name and Address of Applicant: Vicor Corporation

23 Frontage Rd.

Andover, MA 01810

Telephone 508-470-2900

(2) Name of Sewer System Owner:

Town of Andover & Tewksbury

(Municipality or Sewer District)

Department of Public Works

(Department)

Sewer Extension and Connection

(Sewer Extension or Sewer Connection)

N/A

(4) Number of Residences to be served:

(5) Number of Bedrooms:

N/A



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(6) Other establishments to be served:

(a)	N/A			
	Name	Address	Type of Establishment	Design Flow
(b)				
(c)				
(d)				

(7) Design Flow-Gallons Per Day:

Sewage	6,000 gpd
Industrial Wastes	None
Total	6,000 gpd

(8) Location, Length, Size and Capacity of Sewers to be Connected to the existing system: (Attach sketch)

(a)	Dascomb Rd. & Frontage Rd. 2100 '	8 " dia.	1.2 cfs
	Name of Street	Length of Sewer	Size of Sewer Flow Full Capacity
(b)			
(c)			
(d)			

(9) Location, Size and Capacity of Pumping Stations to be Connected to the existing system:

(a)	None				
	Pump Station	Location	Number of Pumps	Pump Size	Pump Capacity
(b)	N/A				

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(10) General Description of Sewers and Pump Stations within the existing sewer system which will transport the flow from the proposed sewer extension of connection to the receiving Wastewater Treatment Facility:

The 8" sewer connection will tie into an existing sewer manhole off

Dascomb Road. The 8" sewer flows to the Town of Tewksbury sewer

system which flows to the Lowell treatment facility.

(11) Receiving Wastewater Treatment Facility:

Name: Lowell Wastewater Regional Utility, Lowell, MA

Average Daily Flow: 28 Million Gallons Per Day

Design Flow: 32 Million Gallons Per Day

(12) Does the discharge contain any industrial waste?

Yes

No ☒

If yes, list any pollutants which you know or have reason to believe are discharged or may be discharged. For every pollutant you list, please indicate its approximate concentration in the discharge and any analytical data in your possession which will support your statement. Additional wastewater analysis may be required as part of this application.

(13) Does the discharge contain any industrial waste containing substances or materials which could harm the sewers, wastewater treatment process, or equipment; have an adverse effect on the receiving water; or could otherwise endanger life, limb, public property, or constitute a nuisance?

Yes

No ☒

(14) Do the wastewaters receive any pretreatment prior to discharge?

Yes

No ☒

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- (15) List, in descending order of significance, the four (4) digit standard industrial classification (SIC) Codes which best describe the facility producing the discharge in terms of the principal products for services provided. Also, specify each classification in words.

SIC CODE

SPECIFY

A. N/A Office Bldg.  
B.  
C.  
D.

- (16) Is the Proposed Discharge Consistent with Existing Sewer Use Regulations:

YES:   x   NO:           

- (17) Is there a site of historic or archeological significance, as defined in regulations of the Massachusetts Historical Commission, 950 CMR 71.00, which is in the area affected by the proposed extension or connection?

YES:            NO:   x   installation is within street pavement area.

- (18) Does this project require a filing under 301 CMR 11.00, the Massachusetts Environmental Policy Act?

YES:            NO:   x  

If yes, Has a Filing been Made?

YES:            NO:           

- (19) Name and Address of Massachusetts Registered Professional Engineer Designing the Proposed System:

Richard G. Cutts  
Name John G. Crowe Associates, Inc.  
385 Concord Ave.  
Address Belmont, MA 02178  
City State Zip  
(617) 484-7109 29034  
Telephone Mass. P.E. Number

(20) Certification

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment of knowing violations." (I will be responsible for publication of public notice of the applicable permit proceedings identified under 314 CMR 2.06(1) (a) through (d).)

Printed Name of Applicant John G. Crowe  
 Signature of Applicant [Signature]  
 Date Signed 4/14/97

Name of Preparer Richard G. Cutts, Registered Professional Civil Engineer, 617-484-7109  
 Title Phone No. Richard G. Cutts

- 21) General Conditions
- (a) All discharge authorized herein shall be consistent with the terms and conditions of this permit and the approved plans and specifications. The discharge of any wastewater at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such a violation may result in the imposition of civil and/or criminal penalties as provided for in Section 42 of the State Act.
- (b) After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:
1. Violation of any terms or conditions of the permit;
  2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and
  3. A change in conditions or the existence of a condition which requires either a temporary or permanent reduction or elimination of the authorized discharge.

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- (c) In the event of any change in control or ownership of facilities from which the authorized discharges originate, the permittee shall notify the succeeding owner or operator of the existence of this permit by letter, a copy of which shall be forwarded to the Director. Succeeding owners or operators shall be bound by all the conditions of this permit, unless and until a new or modified permit is obtained.
- (d) The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges; nor does it authorize or relieve the permittee of any liability for any injury to private property or any invasion of personal rights; nor any infringement of Federal, State, or local laws or regulations; nor does it waive the necessity of obtaining any local assent required by law for the discharge authorized herein.
- (e) The provisions of this permit are severable, and the invalidity of any condition or subdivision thereof shall not make void any other condition or subdivision thereof.
- (f) All information and data provided by an applicant or a permittee identifying the nature and frequency of a discharge shall be available to the public without restriction. All other information (other than effluent data) which may be submitted by an applicant in connection with a permit application shall also be available to the public unless the applicant or permittee is able to demonstrate that the disclosure of such information or particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets in accordance with the provisions of M.G.L. c.21, s.27(7). Where the applicant or permittee is able to so demonstrate, the Director shall treat the information or the particular part (other than effluent data) as confidential and not release it to any unauthorized person. Such information may be divulged to other officers, employees, or authorized representatives of the Commonwealth or the United States Government concerned with the protection of public water or water supplies.
- (g) Transfer of Permits
  - 1. Any sewer system extension or connection permit authorizing an industrial discharge to a sewer system is only valid for the person to whom it is issued, unless transferred pursuant to 314 CMR 7.13. Such permits shall be automatically transferred to a new permittee if:

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- A. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date; and
- B. The notice includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them.

2. Any sewer system extension or connection permit not subject to 314 CMR 7.13(1) automatically transfers to a subsequent owner, operator, or occupant.

(22) Special conditions

APPROVAL RECOMMENDED:

*James J. [Signature]*  
Signature and Title of Appropriate Municipal Official (Phone)  
508-848-1500

(FOR ISSUING OFFICE USE ONLY)

DATE ISSUED

DIRECTOR  
DIVISION OF WATER POLLUTION  
CONTROL

EFFECTIVE DATE OF PERMIT

12/31/86  
Sewer Connections

## **TEWKSBURY - ANDOVER AGREEMENT**

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**AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of August, 1998 by and

between TOWN OF TEWKSBURY, an incorporated township within the County of Middlesex and the Commonwealth of Massachusetts, hereinafter referred to as TEWKSBURY, and TOWN OF ANDOVER, an incorporated township within the County of Essex and the Commonwealth of Massachusetts, hereinafter referred to as ANDOVER.

**WITNESSETH:**

WHEREAS, TEWKSBURY is authorized by law to enter into contracts and agreement with ANDOVER for the purpose of aiding in the abatement of water pollution; and

WHEREAS, TEWKSBURY is willing to enter into an Agreement with ANDOVER

whereby TEWKSBURY would receive and transport wastes of certain ANDOVER USERS

through TEWKSBURY'S Sewerage System to CITY OF LOWELL Sewerage System; and

whereby CITY OF LOWELL would receive, treat and dispose of the waste; and

WHEREAS, TEWKSBURY has entered into an agreement with CITY OF LOWELL

whereby LOWELL would receive, treat and dispose of TEWKSBURY'S wastes through CITY OF LOWELL'S Sewerage System; and

WHEREAS, ANDOVER and LOWELL have entered into an Agreement dated, March 24,

1995 which provides for the adoption and implementation of Industrial Sewer Use Rules and

Regulations and for the connection, extension and use of TEWKSBURY'S Sanitary Sewer System

for certain ANDOVER USERS.

WHEREAS, ANDOVER seeks to allow other ANDOVER USERS to connect, extend and

use TEWKSBURY'S Sanitary Sewer System.



WHEREAS, TEWKSBURY, AND ANDOVER both intend to comply with the applicable federal laws, rules and regulations, including but not limited to user charge, and sewer use regulation requirements; and

WHEREAS, the provision for wastewater treatment and disposal service is necessary to protect the public health, safety, and welfare; and

WHEREAS, TEWKSBURY and ANDOVER have determined to enter into this Agreement for aforesaid reasons.

NOW THEREFORE, in consideration of these premises and mutual benefits to be derived by the parties hereto, it is agreed as follows:

## **ARTICLE I**

### **DEFINITIONS**

1.1 For the purpose of this Agreement, the following terms are defined. Any ambiguities, conflicts, interpretations or terms not so defined shall be resolved by reference to the most stringent definition which may be applicable as may be adopted or promulgated by the Environmental Protection Agency (EPA), the Department of Environmental Protection (DEP), or the local Rules and Regulations of Lowell, Tewksbury and/or Andover, including the definitions contained in 314 CMR 9.02 et seq. and 40 CFR 403.

1.1.1 "ANDOVER" shall mean the Town of Andover, a municipal corporation of the Commonwealth of Massachusetts.

1.1.2 "ANDOVER USERS" shall mean those users located in ANDOVER who have entered into an agreement with ANDOVER and TEWKSBURY and received all other necessary approvals, licenses and permits to extend, connect and use

- TEWKSBURY'S sewage system. The term ANDOVER USER shall mean and refer to both Industrial users and Sanitary Users.
- 1.1.3 "Average Daily Flow" shall mean the total annual flow as measured in gallons at Metering Stations plus agreed-to non-measured direct discharges to TEWKSBURY'S sewerage system divided by the number of days in the year.
- 1.1.4 "Biochemical Oxygen Demand" (BOD or BOD<sub>5</sub>) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade (68 degrees Fahrenheit) expressed in milligrams per liter (mg/l) by weight.
- 1.1.5 "Chlorine Demand" shall mean the amount of chlorine expressed in mg/l required to be added to water, sewage or other liquid to achieve a combined chlorine residual after fifteen (15) minutes contact of one (1) mg/l.
- 1.1.6 "Combined Sewer" shall mean a sewer receiving both surface runoff and sanitary sewage and/or industrial wastes.
- 1.1.7 "Executive Director" shall mean the Executive Director of the Lowell Regional Wastewater Utility of Lowell, or his duly authorized representative.
- 1.1.8 "Indirect discharge" shall mean the discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the Act (33 USC 1317) into the POTW: (including holding tank waste discharged into the system).
- 1.1.9 "Industrial User Permit" shall mean the permit required to be obtained from the LOWELL by industrial users to discharge to the POTW.
- 1.1.10 "Industrial User" shall mean a source of indirect discharge.

1.1.11 "Industrial wastewater" shall mean all watercarried wastes and wastewater, excluding domestic wastewater and unpolluted water. Includes all wastewater from any producing, manufacturing, processing, testing, institutional, commercial, agricultural, or other operations where the wastewater discharged includes nondomestic wastes.

1.1.12 "Interference" shall mean a discharge by an industrial user which alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substance Control Act, and the Marine Protection Research and Sanctuaries Act.

1.1.13 "Local limits" shall mean specific effluent pollutant concentrations developed by the POTW for industrial user(s) in order to prevent any interference and/or pass through of the POTW as mandated by Section 40 CFR, Section 403.5(c).

- 1.1.14 "LOWELL" shall mean the City of Lowell, a municipal corporation of the Commonwealth of Massachusetts.
- 1.1.15 "Maximum Daily Flow" shall mean the maximum gallons recorded at Metering Stations plus agreed-to allowances for direct discharges to TEWKSBURY sewerage system during a 24-hour period during any calendar year.
- 1.1.16 "Outside User Rate" shall mean the rate adopted by a municipality to charge users located outside the boundaries of the municipality to discharge sewage into that municipality sewer system. The Outsider User Rate shall be charged or set based upon a per 1000 gallon of actual usage. The Outside User Rate shall be adopted by the municipality and be part of the municipality's sewer use regulations.
- 1.1.17 "Pass through" shall mean the discharge of pollutants through the POTW into the waters of the United States in quantities or concentration, which alone or in conjunction with discharges from other sources is cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
- 1.1.18 "Peak Rate of Flow" shall mean the maximum rate of flow recorded at Metering Stations or measured in the direct discharges to TEWKSBURY'S sewerage system during any calendar year.
- 1.1.19 "pH" shall mean the measure of the Alkalinity or acidity of a substance, expressed in standard units.
- 1.1.20 "Pretreatment or treatment" shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants, or the

alteration of the nature of pollutant properties in wastewater to a less harmless state prior to or in lieu of discharging or otherwise introducing such pollutants to the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes other than the above means, except as prohibited by 40 CFR Section 403.6(d).

- 1.1.21 "Publicly owned treatment works or POTW" shall mean the city-owned treatment works, as defined in Section 212 of the Act (33 USC 1292). This definition includes any sewers which convey wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. For the purpose of this permit, "POTW" shall also include any sewers which convey wastewater to the POTW from persons outside the city who are, by agreement with the city, users of the city's POTW.
- 1.1.22 "Pretreatment requirements" shall mean any substantive or procedural requirements related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.
- 1.1.23 "Replacement Costs" shall mean expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the sewage works to maintain the capacity and performance for which said works were designed and constructed.
- 1.1.24 "Sanitary Sewage" shall mean sewage discharging from sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, small laundries, kitchens, cafeterias and floor drains essentially free of industrial wastes or toxic

materials.

1.1.25 "Sanitary User" shall mean a user who discharges sanitary sewage.

1.1.26 "Service Life" shall mean the period of time during which the sewage works or component of a waste treatment management program will be capable of performing a function.

1.1.27 "Sewage System or Sewage Works" shall mean all facilities for collecting, conveying, pumping, treating and disposing of sanitary sewage and/or industrial wastes.

1.1.28 "Significant Industrial User or Significant User" shall mean the following:

Except as provided in paragraph (b) of this section, the term Significant Industrial User means:

- (a) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and
- (b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary,

noncontact cooling or boiling blowdown wastewater); contributes a process wastewater which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f) (6)).

- 1.1.29 "Suspended Solids" (SS) shall mean solids that either float on the surface of, or are in suspension in, water, sewage, wastewater or other liquids and which are removable by laboratory filtering.
- 1.1.30 "TEWKSBURY" shall mean the Town of Tewksbury, is a municipal corporation of the Commonwealth of Massachusetts.
- 1.1.31 "Total Cost" shall mean construction costs, engineering and legal fees, amortization costs and land costs.
- 1.1.32 "Toxic Pollutant" shall mean one of the pollutants, or combination of those pollutants which are listed under provisions of Section 307 of the Act.
- 1.1.33 "Toxic substances" shall mean any substance or mixture, whether gaseous, liquid or solid, which, when discharged into the sewer system, may tend to interfere with any wastewater treatment process, constitute a hazard to human beings or animals, inhibit aquatic life, or create a hazard to recreation in the receiving waters of the effluent from the POTW.
- 1.1.34 "Upset" shall mean an incident in which there is unintentional and temporary noncompliance with pretreatment standards because of factors beyond the control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- 1.1.35 "User Charges" shall mean charges levied for use of sewage rights to discharge into the sewer system.

1.1.36 "Wastes" shall mean substances in liquid, solid or gaseous form that can be carried in water.

1.1.37 "Wastewater" shall mean the spent water of a community which may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and stormwater that may be present.

## **ARTICLE II**

### **GENERAL PROVISIONS**

2.1 ANDOVER understands and agrees to the following obligations, limitations, and commitments, made in return for TEWKSBURY'S agreement to permit connection by ANDOVER USERS to sewage works.

2.1.1 "Limitations of Rights." Nothing in this Agreement shall be construed as a grant by TEWKSBURY of any exclusive right or privilege. Solely with respect to ANDOVER USERS, ANDOVER agrees to adopt the sewer rules and regulations to be adopted by TEWKSBURY as amended, including the requirements of the LOWELL Pretreatment program.

2.1.2 "Sewer Use Regulation" TEWKSBURY and ANDOVER agree to adopt and enforce regulations that embodied rules related to use of TEWKSBURY'S sewage works for ANDOVER USERS. Said rules shall include the CITY OF LOWELL'S Sewer Use Ordinance, Lowell City Code Chapter 18 and any amendments thereto



that may be required to be acceptable to federal and state authorities, to TEWKSBURY and to LOWELL. As a minimum, such rules shall prescribe conditions and requirements for use by ANDOVER USERS of sewage works so as to comply with the limitations set forth in "TOWN OF TEWKSBURY Sewer Use Regulations", as shall be adopted and amended.

2.1.3 Ninety days prior to the adoption of any new or revised sewer use regulations or ordinance or by-law with which ANDOVER USERS will be expected to comply, LOWELL and TEWKSBURY shall provide copies of said regulation, ordinance or by-law to ANDOVER for review and comment.

2.1.4 Failure of Andover to adopt changes to any rules or regulation as required by the DEP, EPA, Lowell, or Tewksbury (if approved by LOWELL) will not relieve the ANDOVER USERS from compliance with the modified rule or regulation.

### ARTICLE III

#### OBLIGATIONS AND RESPONSIBILITIES

3.1 TEWKSBURY shall receive and transport ANDOVER USERS' wastes in accordance with all existing or future laws, regulations, existing or future TEWKSBURY Sewer Regulations, water quality standards, and orders and decrees of any governmental authority having jurisdiction over the transmission of said wastes; provided, however, that the treatment of ANDOVER USERS wastes by LOWELL shall be of such a type and degrees as may be necessary to provide for the application of Best Practicable Waste Treatment Technology. LOWELL shall ensure that all ANDOVER USERS shall conform to all appropriate industrial wastewater pretreatment rules and regulations as established by LOWELL and

appropriate state and federal regulatory agencies. ANDOVER agrees to support and cooperate with LOWELL in the enforcement with respect to any ANDOVER USER who fails, refuses or neglects to comply with the industrial wastewater pretreatment rules and regulations after demand or request is made by LOWELL.

### 3.2 SECTION I GENERAL REGULATIONS

#### A. Uncontaminated waters:

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, or noncontact cooling water to any sanitary sewer without expressed permission by the Executive Director of the Lowell Wastewater Utility.

#### B. Prohibited Discharges.

1. Discharge prohibited by Federal Regulations A User may not introduce into a POTW any pollutant(s) which may cause Pass Through Interference. These general prohibitions and the specific prohibitions below apply to each User introducing pollutants into a POTW whether or not the User is subject to National Pretreatment Standards or any national, State, or local Pretreatment Requirements. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes which can harm either the sewers, sewage treatment process or equipment, collection system, treatment plant headworks, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property or considered a nuisance. The substances prohibited are:

(a) Solid or viscous substances in quantities or of such size capable of causing obstruction of flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(b) Heat in the amounts which will inhibit biological activity in the POTW resulting in interference but in no case heat in such amounts that the temperature at the POTW treatment plant exceeds 40°C (104°F);

(c) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(d) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oils in amounts which would cause interference or passthrough;

(e) Any pollutant that results in the presence of toxic gases, vapors or fumes within the POTW in any quantity that may result in worker health and safety problems;

(f) Pollutants which create a fire or explosive hazard in the POTW, including but not limited to, wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods

specified in 40 CFR 261.21;

- (g) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;
- (h) Any trucked or hauled pollutants, except at discharge points

designated by the Executive Director.

2. Discharge prohibited on opinion of the Executive Director of Lowell Regional Wastewater Utility. The following discharges are prohibited from entering the wastestream without the explicit, written approval of the

Executive Director or his/her designee. In forming his/her opinion as to the acceptability of these wastes, the Executive Director will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors. The substances prohibited are:

- (a) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;

- (b) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or in combination with other substances to cause fire or explosion, or be injurious in any other way to the POTW or its operation. At no time shall two

(2) consecutive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five (5) percent, nor any single reading be more than ten (10) percent of the Lower Explosive Limit (LEL) of the meter.

Prohibited materials include, but are not limited to: fuel oil, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides, and any other substance which is a fire hazard or a hazard to the system;

(c) Any waters or wastes having a pH lower than six (6) or higher than nine and five tenths (9.5);

(d) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall any substance discharged to the POTW cause the POTW to violate its own NPDES and/or state disposal system permit or the receiving water quality standards;

(e) It shall be unlawful for any person to discharge into the sewer system or cause to be discharged into the sewer system, the sludge resulting from the pretreatment of water or wastewater;

(f) Except where expressly authorized to do so by an applicable federal categorical pretreatment standard, no user, whether

subject to categorical requirements or not, shall ever increase the use of process water or in any other way attempt to dilute the discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical standard. The control Authority may impose mass limitations on the user where the imposition of mass limitations is appropriate;

(g) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (zero (0) to sixty-five (65) degrees Celsius);

(h) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 horsepower metric) or greater shall be subject to the review and approval of the Executive Director of the Lowell Regional Wastewater Utility of his/her

designee;

(i) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;

(j) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting excessive chlorine requirement to such degree that any such

material received in the composite sewage at the sewage treatment works exceeds the limits established by the Executive Director of the Lowell Regional Wastewater Utility for such materials;

(k) Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the Executive Director, as necessary after treatment of the composite sewage to meet the requirements of state, federal, or the public agencies having jurisdiction over discharge to the receiving waters;

(l) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Executive Director in compliance with applicable state or federal regulations;

(m) Materials which exert or cause:

- 1) Unusual concentrations of inert suspended solids, such as, but not limited to, fuller's earth, lime slurries and lime residues; or of dissolved solids, such as, but not limited to, sodium chloride and sodium sulfate;
- 2) Excessive discoloration, such as, but not limited to, dye wastes and vegetable tanning solutions;
- 3) Unusual volume of flow or concentration of wastes constituting slugs;

(n) Waters or wastes containing substances which are not amenable

to treatment or reduction by the sewage treatment processes

employed, or are amendable to treatment only to such degree that the sewage treatment plan effluent cannot meet with requirements of other agencies having jurisdiction over discharge to the receiving waters;

(o) Any sludges, screenings or residues from the pretreatment of industrial wastes;

(p) Any wastewater causing the treatment plant's effluent to fail a toxicity test.

3.3 All measurements of volume and characteristics of ANDOVER USERS' wastes shall be made by Meters constructed or installed and maintained by said ANDOVER USERS. All flow measurements made at the meters for ANDOVER USERS will be transmitted to TEWKSBURY.

3.4 Industrial wastes from ANDOVER USERS shall be judged by the same standards as are in effect within TEWKSBURY'S Sewerage System, notwithstanding the provisions of Paragraph 3.2 of this ARTICLE.

#### ARTICLE IV

#### AGREEMENT TERM

4.1 The provisions of this Agreement shall run concurrently with the TEWKSBURY-LOWELL Intermunicipal Agreement and any extensions thereof for a total term not to exceed twenty-five years from the date hereof subject to the provisions of ARTICLE XI.



## **ARTICLE V**

### **IMPLEMENTATION**

- 5.1 TEWKSBURY agrees to provide a sewerage system to handle wastes from ANDOVER USERS as may be approved by TEWKSBURY and ANDOVER. No ANDOVER USER may apply to TEWKSBURY to connect to TEWKSBURY'S sewage system unless and until Andover's Sewer Commissioners and Board of Health gives approval to said ANDOVER USER to connect to the TEWKSBURY sewage system. No approval shall be given by TEWKSBURY to an ANDOVER USER to connect to the TEWKSBURY sewage system unless ANDOVER gives such approval to said ANDOVER USER.

## **ARTICLE VI**

### **USER CHARGES**

- 6.1 User Charges:
- 6.1.1. TEWKSBURY shall develop, an equitable Outsider User Charge Rate applicable to ANDOVER USERS who shall use TEWKSBURY'S sewage system.
- 6.1.2 TEWKSBURY, upon approval of its Outside User Charge Rate, must incorporate said rate in one or more municipal sewer regulations.
- 6.1.3 All fees, costs and charges relating to the use by ANDOVER USERS of TEWKSBURY'S Sanitary Sewage System shall be billed and collected by TEWKSBURY. After July 1, 1999, TEWKSBURY shall bill ANDOVER at the rate charged by TEWKSBURY for said fees, costs, and charges and ANDOVER shall thereupon bill the ANDOVER USER at that rate charged by TEWKSBURY. ANDOVER may include a service fee or administrative charge for participating

7.1.1 The reasonable costs of any police services required for rerouting of traffic or other traffic duties during any construction work performed in extending or constructing following costs:

7.1 The ANDOVER USERS who are granted the right and license to extend, connect and use TEWKSBURY'S sanitary sewer system by TEWKSBURY and ANDOVER and who enter into a user agreement with TEWKSBURY and ANDOVER shall be responsible for the

## PAYMENT OF COSTS

### ARTICLE VII

ANDOVER USER and ANDOVER and TEWKSBURY shall be entitled and permitted to lien, collect and take any other action as permitted by said G.L. 40 and G.L. 60 to collect any fee, cost, and charge against any ANDOVER USER. M.G.L. ch. 60. All charges shall constitute a lien against the property of any shall be considered municipal charges as such are defined by M.G.L. ch. 40 and the execution of this Agreement. The charges owed by all ANDOVER USERS billing arrangement which TEWKSBURY and ANDOVER may enter into after sanitary sewage system. The ANDOVER USERS shall comply with any other USERS for the fees, costs, and charges relating to the use of TEWKSBURY'S conduct the requirements of this paragraph, including the billing of ANDOVER support and receive approval at its annual town meeting to allow ANDOVER to ANDOVER shall proceed in good faith and use reasonable efforts to submit, charges are subject to approval and appropriation by ANDOVER'S town meeting. in such billing ANDOVER'S obligations to pay TEWKSBURY for said bills and

the sewage system to the ANDOVER USERS' site.

- 7.1.2 The costs of any plans, specifications or other documents as may be required by TEWKSBURY and ANDOVER for any extension, connection or use, including any costs incurred by ANDOVER and TEWKSBURY for engineering, consultants, and attorney's fees.
- 7.1.3 To TEWKSBURY the Outsider User Rate per 1000 gallons of sewage actually used by said user and discharged into the sewer system.
- 7.1.4 The costs to extend or connect said sewer system to said user's property, facility, or building.

## **ARTICLE VIII**

### **RIGHTS AND DUTIES**

- 8.1 The term of this Agreement shall run concurrently with the TEWKSBURY-LOWELL Intermunicipal Agreement and any extensions thereof, but the total term shall not exceed twenty-five (25) years from the date hereof unless renewed as provided herein during which time ANDOVER USERS shall have the right to the continued use of TEWKSBURY'S sewerage works for as long as those sewerage works remain in active use. The right shall be limited to the terms and provisions established by the agreement entered by the ANDOVER USERS with ANDOVER and TEWKSBURY. In the twenty-third (23rd) year of this Agreement, the parties shall begin negotiating for a second term of the contract. A second term of the Agreement must be approved by the respective Town Meetings of ANDOVER and TEWKSBURY prior to expiration of this original twenty-five (25) year

- agreement, unless applicable state law or local rule, approved warrant article or regulation provides otherwise. In the event that the new Agreement has not been finalized at the end of the twenty-five year period, the ANDOVER USERS covered by the original Agreement are still bound to the requirements of the LOWELL Industrial Pretreatment Program. No new connection or industrial users will be added to the system until the new Agreement is finalized.
- 8.2 Each party shall truly and faithfully perform its duties, all the undertakings, covenants, terms and conditions of this agreement during the term of this agreement, and any extension thereof which may be granted and subject further to the following:
- 8.2.1 ANDOVER shall assume the defense of and indemnify and hold harmless TEWKSBURY including TEWKSBURY'S Town Manager, agents, servants, employees, and/or elected officials from and against all liability, damage, loss, claim, demands, and actions of any nature whatsoever which arise out of or are connected with or are claimed to arise out of or be connected with the failure of ANDOVER to adopt sewer use and regulations as required by this Agreement, or to assist with the enforcement of this Agreement with respect to any ANDOVER USER as required by Article 3.1.
- 8.2.2 TEWKSBURY shall assume the defense of and indemnify and hold harmless ANDOVER, including ANDOVER'S Sewer Commission, agents, servants, employees, and/or elected officials from and against all liability, damage, loss, claim, demands, and actions of any nature whatsoever which arise out of or be connected with or are claimed to arise out of or be connected with the failure of ANDOVER to adopt sewer use and regulations as required by this Agreement, or to assist with the enforcement of this Agreement with respect to any ANDOVER USER as required by Article 3.1.

including, without limiting the generality of the foregoing thereto, all liability, damage, loss, claims, demands and action of account of personal injury, death or property loss experienced by ANDOVER, its Sewer Commission, its agents, servants, employees and/or elected officials, whether or not caused or claimed to have been caused by active or inactive negligence, or other breach of duty by the Town of TEWKSBURY, its agents, Town Manager, elected officials and/or employees. TEWKSBURY shall at its own expense investigate all such claims and demands against ANDOVER, its Sewer Commission, agents and/or employees, attend to claim settlement or other disposition, defend all actions based thereon and pay all charges or attorney's fees and all other costs and expenses of any kind arising from any such liability, loss, claims, demands, and actions.

- 8.2.3 In the event ANDOVER or TEWKSBURY does not receive payment from any ANDOVER USER for the Outside User Rate charges or any license fee as may be imposed by the agreement between ANDOVER, TEWKSBURY, and the ANDOVER USER then the ANDOVER USER shall be prohibited from extending, connecting or using their sewer system utilizing the TEWKSBURY connection until all payments due together with any interest and late charges are paid in full. TEWKSBURY shall be entitled to proceed directly against any such ANDOVER USER for the collection of any of said fees or charges.

## **ARTICLE IX**

### **ALLOCABLE SHARE**

- 9.1 The amount of actual daily gallon usage as approval for any ANDOVER USER shall be

- 11.1 With respect to ANDOVER USERS, ANDOVER and TEWKSBURY hereby agreed to abide by, and conform to, all applicable laws of the United States and the Commonwealth of Massachusetts, together with such rules and regulations as LOWELL may promulgate from time to time with regard to its sewerage works.
- 11.2 No person(s), individual, owner, user, corporation or other entity or grouping shall be authorized to connect, extend, or use Tewksbury's sewage system without entering into an User Agreement with Andover and Tewksbury and without receiving all other necessary or required approvals, licenses and permits to make such connection, extension, or use of said sewage system. Lowell, Tewksbury and/or Andover may bring an action against any

## CONFORMANCE TO LAW

### ARTICLE XI

- 10.1 With respect to ANDOVER USERS, ANDOVER and TEWKSBURY shall adopt and implement Lowell's Industrial Sewer Use Ordinance in accordance with Article XIII of this Agreement and shall amend said Sewer Use Ordinance within ninety (90) days of notification by LOWELL of any changes, modifications or amendments to said Rules and Regulations. These rules and regulations shall subject all ANDOVER USERS to the Lowell's Pretreatment Program if said are applicable.

## RULES AND REGULATIONS

### ARTICLE X

considered as part of TEWKSBURY'S allocable share of usage from Lowell's Wastewater Treatment System. ANDOVER and TEWKSBURY shall forward to LOWELL a copy of all User Agreements for any ANDOVER USER.

person, individual, owner, user, corporation or other entity who connects, extension, or uses said sewage system without complying with the terms hereof.

11.3 After the execution of this Agreement, the parties shall submit this Agreement to LOWELL for submission by LOWELL to the Environmental Protection Agency for its review and approval pursuant to the applicable code of Massachusetts Regulations.

11.4 If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, or if any agency, board, commission or division of the state or federal government or any court determines or declares any provision of this Agreement to be illegal, invalid, or unenforceable then, the remainder of this Agreement or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## **ARTICLE XII**

### **INDUSTRIAL SEWER USE ADDENDUM**

12.1 TEWKSBURY and ANDOVER shall enter as part of this Agreement an Industrial Sewer Use Addendum attached hereto. The Industrial Sewer Use Addendum is incorporated herein by reference.

IN WITNESS WHEREOF, TEWKSBURY and ANDOVER have caused their proper representative on the day and year first above written.

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By Its Town Manager

FOR THE TOWN OF TEWKSBURY, MASSACHUSETTS

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By its Chairman

BOARD OF SELECTMAN

Town Counsel

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Approved only as to Form

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By Its Sewer Commissioners

FOR THE TOWN OF ANDOVER, MASSACHUSETTS



Approved as to Form

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Approved only as to Form

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Town Counsel

FOR THE CITY OF LOWELL, MASSACHUSETTS

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City Manager

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Commissioner of Public Works

Approved only as to Form

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City Solicitor

# INDUSTRIAL SEWER USE ADDENDUM

ADDENDUM made this \_\_\_\_\_ day of August, 1998 between THE CITY OF LOWELL

("LOWELL"), THE TOWN OF TEWKSBURY ("TEWKSBURY") and THE TOWN OF

ANDOVER ("ANDOVER"), and all municipal corporations within the County of Middlesex.

WHEREAS LOWELL, TEWKSBURY and ANDOVER desire to enter an Industrial Sewer

Use Addendum as part of the TEWKSBURY-ANDOVER Agreement.

NOW THEREFORE, for mutual consideration, the parties agree with respect to

ANDOVER USERS as follows:

1. A. TEWKSBURY has adopted and ANDOVER will adopt Local Industrial

Sewer Use Rules and Regulations which are no less stringent and are as

broad in scope as the sewer use ordinance Chapter 18, Article 3 of the Code

of Ordinances of the City of Lowell. TEWKSBURY and ANDOVER will

forward to LOWELL and Environmental Protection Agency for review a

draft of its proposed Industrial Sewer Use Rules and Regulations within the

later of ninety (90) days of receipt of LOWELL'S Industrial Sewer Use and

Regulations or ninety (90) days of the date of execution of all parties of this

Addendum. TEWKSBURY and ANDOVER will adopt its Industrial Sewer

Use Rules and Regulations within sixty (60) days of receiving approval

from LOWELL and Environmental Protection Agency of its content.

B. Whenever LOWELL revises its Industrial Sewer Use Regulations it will

forward a copy of the revisions to TEWKSBURY and ANDOVER.

TEWKSBURY and ANDOVER will adopt revisions to its Sewer Use Rules and Regulations that are at least as stringent as those adopted by LOWELL. TEWKSBURY and ANDOVER will forward to LOWELL and Environmental Protection Agency for review its proposed revisions within ninety (90) days of receipt of LOWELL's revisions. TEWKSBURY and ANDOVER will adopt its revisions within sixty (60) days of receiving approval from LOWELL of the content thereof. If TEWKSBURY has adopted a requirement which is more stringent than LOWELL'S requirement, ANDOVER shall adopt the more stringent requirement. ANDOVER shall adopt the more stringent requirement in accordance with the same ninety day (90) time period for forwarding a draft and sixty day time period for adoption following approval as described above.

- C. TEWKSBURY has adopted and ANDOVER will adopt within its local Industrial Sewer Use Rules and Regulations pollutant specific local limits which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by LOWELL within sixty (60) days of the execution of this Addendum. If LOWELL makes any revisions or additions to its local limits, LOWELL will forward to TEWKSBURY and ANDOVER a copy of such revisions or additions within thirty (30) days of enactment thereof. TEWKSBURY-ANDOVER will adopt any such revisions or additions within ninety (90) days of receipt thereof.

2. A. With respect to ANDOVER USERS, ANDOVER designates LOWELL as the agent of ANDOVER for the purposes of implementation and enforcement of ANDOVER'S Industrial Sewer Use Rules and Regulations against industrial users located in ANDOVER. LOWELL may take any action under ANDOVER'S Industrial Sewer Use Rules and Regulations that could have been taken by ANDOVER, including the enforcement of the Rules and Regulations in courts of law.
- B. LOWELL, on behalf of and as agent for ANDOVER will perform technical and administrative duties necessary to implement and enforce ANDOVER'S Industrial Sewer Use Rules and Regulations. LOWELL will (1) update the Industrial waste survey; (2) issue permits to all industrial users required to obtain a permit; (3) conduct inspections, sampling, and analysis; (4) take all appropriate enforcement action as outlined in LOWELL's enforcement response plan and provided for in ANDOVER'S Industrial Sewer Use Rules and Regulations, and (5) perform any other technical or administrative duties the parties deem appropriate. In addition, LOWELL may, as agent of ANDOVER, take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination. Any ANDOVER USER shall also be required to obtain connection permits and approvals from the ANDOVER Board of Selectman and ANDOVER Board

of Health.

3. LOWELL will be responsible for all costs incurred by it in implementing and enforcing ANDOVER's Industrial Sewer Use Rules and Regulations. LOWELL will bill industrial users directly for sampling and related costs in accordance with Chapter 18 of Article 3 of the Code of Ordinances of the City of Lowell. The parties acknowledge that LOWELL may impose additional charges to recover pretreatment program costs. Any such charge imposed by LOWELL will be billed by LOWELL.
4.
  - A. If any term of this Addendum is held to be invalid in any judicial action, the remaining terms will be unaffected.
  - B. The parties will review and revise this Addendum to ensure compliance with the Federal Clean Water Act (42 U.S.C. Section 1251 et seq.) and rules and regulations (see 40 CFR Part 403) issued thereunder, as necessary, but at least once every five (5) years on a date to be determined by the parties.
  - C. ANDOVER will indemnify and hold harmless LOWELL and TEWKSBURY for any costs incurred due to the failure of ANDOVER to adopt any changes or modifications as required within this Addendum.
5. If the authority of LOWELL to act as agent for ANDOVER under this Addendum is questioned by an industrial sewer user, court of law, or otherwise, ANDOVER will take whatever action is necessary to ensure the implementation and LOWELL'S enforcement of its industrial sewer use rules and regulations against its industrial sewer users, including, but not limited to, implementing and enforcing its industrial

sewer use rules and regulations on its own behalf, amending this Addendum to clarify LOWELL's authority or assisting in the enforcement of the said Industrial Sewer Use Rules and Regulations for any ANDOVER USER.

IN WITNESS WHEREOF, LOWELL, TEWKSBURY and ANDOVER have caused this Agreement to be executed by proper representatives on the day and year first above written.

FOR THE TOWN OF ANDOVER, MASSACHUSETTS

By Its Sewer Commissioners

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Approved only as to Form

\_\_\_\_\_  
Town Counsel

By Its Chairman

BOARD OF SELECTMAN

\_\_\_\_\_

FOR THE TOWN OF TEWKSBURY, MASSACHUSETTS

By Its Town Manager

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Approved only as to Form

\_\_\_\_\_  
Town Counsel

FOR THE CITY OF LOWELL, MASSACHUSETTS

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Commissioner of Public Works

Approved only as to Form

\_\_\_\_\_  
City Solicitor

ASSIGNMENT OF AGREEMENT/LICENSE

This ASSIGNMENT OF AGREEMENT/LICENSE is executed and delivered as of the 14 day of March, 1997, by and between JEFFREY D. SHEEHY and AUGUSTINE P. SHEEHY, individually, jointly and severally d/b/a Dundee Properties (collectively "SHEEHY") of 30 Glenn Street, Lawrence, Massachusetts 01843, JEFFREY D. SHEEHY, as Trustee of the Osgood Street Trust ("OSGOOD") under declaration of trust dated January 17, 1986 and recorded in the Essex North District Registry of Deeds in the Land Court Department as Document No. 39288, with Transfer of Title No. 10232, in Land Court Book 73, Page 137, AUGUSTINE P. SHEEHY, Trustee of Frontage Road Trust, under declaration of trust dated January 17, 1986 and recorded in the Essex North District Registry of Deeds Land Court Department as Document No. 39286 with Transfer of Title No. 10231, in Land Court Book 73, Page 129, ("FRONTAGE") all collectively referred to as ("ASSIGNORS") and Vicor Corporation, a Delaware Corporation of 23 Frontage Road, Andover, Massachusetts ("VICOR" or "ASSIGNEE").

WHEREAS, ASSIGNORS and ASSIGNEE have executed an Agreement for the Assignment of Rights in Agreement/License of even date which provides for the assignment, sale, transfer, conveyance and delivery of the ASSIGNEE's rights, titles, interests and licenses in and to a certain Agreement/License between the ASSIGNORS and the Town of Tewksbury dated July of 1988;

WHEREAS, ASSIGNORS desire to assign, sell, transfer, convey and deliver any and all of their rights, titles, interests and



licenses in said Agreement/License and ASSIGNEE desires to accept the delivery of the assignment, sale, transfer and conveyance of said rights, titles, interests and licenses;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein and contained in the Agreement between the parties of even date and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. ASSIGNORS hereby sell, assign, transfer, convey and deliver all of ASSIGNOR's rights, titles, interests and licenses in and to a certain Agreement/License between the ASSIGNORS and the Town of Tewksbury, Massachusetts dated July of 1988, a copy of said Agreement/License is attached hereto as Exhibit "A" and incorporated herein by reference ("Agreement/License").
2. ASSIGNEE hereby accepts the foregoing assignment, transfer, sale, conveyance and delivery by ASSIGNORS and hereby assumes and agrees to perform all of ASSIGNORS obligations under the Agreement/License.
3. ASSIGNORS hereby represent and warrant to ASSIGNEE that (a) they have full power, authority and legal right to execute and delivery this Assignment; (b) no other assignment of any interest in the rights and licenses contained in the Agreement/License has been made by any of the ASSIGNORS; (c) this Assignment constitutes a valid and binding obligation of the ASSIGNORS; and, (d) that this Assignment assigns, sells,

transfers and delivers all of ASSIGNORS' rights and licenses

under the terms of the Agreement/License.

For Vicor's title, see Transfer Certificate of Title No. 11258

in the Land Court Department of the Essex North District Registry

of Deeds in Land Court Book 83, Page 237.

IN WITNESS WHEREOF, ASSIGNORS and ASSIGNEE have caused this Assignment to be executed and sealed this 19 day of March, 1997.

ASSIGNORS:

OSGOOD STREET TRUST

By:

Jeffrey D. Sheehy, Trustee

FRONTAGE ROAD TRUST

By:

Augustine P. Sheehy, Trustee

Hande F. Brolat  
Witness

Hande F. Brolat  
Witness

Hande F. Brolat  
Witness

Hande F. Brolat  
Witness

Jeffrey D. Sheehy  
Individually and d/b/a  
Dundee Park Properties

Augustine P. Sheehy  
Individually and d/b/a  
Dundee Park Properties

ASSIGNEE:

VICOR CORPORATION

JP Crest  
Witness

By: Patrizio Vinciarelli  
Patrizio Vinciarelli,  
its President

VICOR CORPORATION

John P. Crest  
Witness

By: Mark A. Glazer  
Mark A. Glazer  
it's Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 19, 1997

Then personally appeared the above-named Patrizio Vinciarelli, as President of Vicor Corporation and made oath that the above instrument was executed by him as President and is the duly authorized act and deed on behalf of said corporation, before me,

Corrine Camille Heston  
Notary Public  
My Commission Expires: 9/21/2001

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 19, 1997

Then personally appeared the above-named Mark A. Glazer, as Treasurer of Vicor Corporation and made oath that the above instrument was executed by him as President and is the duly authorized act and deed on behalf of said corporation, before me,

Corrine Camille Heston  
Notary Public  
My Commission Expires: 9/21/2001

vicor\30ab\assign

JOHN F. GALT, Notary Public  
My Commission Expires: 12/1/98

Then personally appeared the above-named Jeffrey D. Sheehy and Augustine P. Sheehy, individually, as Trustees of the above named Trusts, and d/b/a Dundee Park Properties and made oath that the above instrument was executed as their free will and deed, individually and as said Trustees, before me,

March 19, 1997

Middlesex, ss

Essex

COMMONWEALTH OF MASSACHUSETTS

# EXHIBIT A

## AGREEMENT/LICENSE

This Agreement is made by and between the Town of Tewksbury, a Massachusetts municipal corporation with a usual place of business at Town Hall, Tewksbury, Massachusetts, by its Town Manager ("Town"), and Augustine P. Sheehy and Jeffrey D. Sheehy, jointly and severally, d/b/a Dundee Park Properties ("Sheehy"), with a usual place of business at 30 Glenn Street, Lawrence, Massachusetts 01843, and Augustine P. Sheehy, Trustee, Frontage Road Trust, under declaration of trust dated January 17, 1986, and recorded in Essex North District Registry of Deeds, Document No. 39286; and Jeffrey D. Sheehy, Trustee, Osgood Street Trust, under declaration of a trust dated January 17, 1986, and recorded in said Registry, Document No. 39286.

WHEREAS, Sheehy is the owner of certain real property located in Andover, Massachusetts, shown on Andover Assessor's Map 179, Lots 30A, 30B, 30E, 30T, 32 & 33, ("Property") and more particularly described in Certificates of Title recorded with Essex North District Registry of Deeds; Lots #3 and #5 owned by Augustine P. Sheehy, Trustee, Frontage Road Trust, Certificate of Title #10231 Essex North Registry Land Court Division; Lot #4 owned by Jeffrey D. Sheehy, Trustee, Osgood

(1) to allow Sheehy, upon the payment of a certain fee, specified below, the right to connect into and use the System and Sheehy is to have a usage capacity upon such connection of a maximum of 20,000 gallons per day; and

WHEREAS, the Town is willing to:

appropriate connection to the System; and

"Project") which are necessary in order to accomplish an

by the System and is willing to construct the facilities (the

WHEREAS, Sheehy desires that the Property shall be served

agreement and license with the Town; and

Life Insurance Company have or intend to enter into a similar

WHEREAS, Brockway-Smith, Inc. and Connecticut General

Group, Inc.; and

Dascomb and Frontage Roads" ("Conceptual Plan") prepared by Lea

entitled "Conceptual Plan for Sewer Extension on East Street,

WHEREAS, the Property is shown on the attached plan

boundary of the said property; and

approximately three thousand (3,000) feet from the southwest

extends only to a point in East Street, Tewksbury which is

sanitary sewer system of the Town of Andover. The System

sanitary sewer system of the Town (the "System") or by the

WHEREAS, the Property is not presently served by the

Registry of Deeds, and;

Court Plan #20282C dated August 23, 1979, Essex North District

North Registry Land Court Division. Lots as shown on Land

Street Trust, described in Certificate of Title #10233, Essex

(ii) to enter into such other agreements with Sheehy which are more particularly set forth below.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is acknowledged by all parties, the Town and Sheehy agree as follows:

1. Sheehy shall have the right, at their option and at their sole cost and expense, to extend the East Street sewer beyond manhole station 6 + 36 on the Conceptual Plan of the proposed sewer route, and any such extension by Sheehy shall be in accordance to the requirements of the conceptual Plan.

2. Sheehy, in regard to this project, shall pay for:

(i) the reasonable costs of any additional police services required for rerouting of traffic or other traffic duties during any construction work performed by Sheehy in extending the sewer beyond manhole station 6 + 36 as shown on the Conceptual Plan;

(ii) the reasonable costs of the review of plans, specifications and other documents by Camp, Dresser & McKee ("CDM"), or other engineer designated by the Town, prior to the date of this Agreement/License and the reasonable costs of periodic inspections made by CDM or other Town consultants, deemed necessary and reasonable by CDM, during the course of the Project construction work being performed by Sheehy beyond manhole station 6 + 36 on the Conceptual Plan; and

(iii) all other necessary and reasonable costs incurred by the Town after the execution of this agreement that

are directly attributed to the construction of the sewer extension by Sheehy beyond manhole station 6 + 36 on the Conceptual Plan.

3. Sheehy shall, upon receipt of timely written notice, indemnify, hold harmless and defend the Town, its agents, employees, and officers from and against any and all liabilities, claims, penalties, fines, forfeitures, suits, administrative proceedings and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which may be alleged against the Town or which the Town may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property or any violation or alleged violation of governmental laws, regulations or orders, all caused by or resulting from the negligent acts or omissions of any officer, employee, contractor or agent of Sheehy in performing the work to extend the sewer by Sheehy. Sheehy shall be entitled to participate in any action, suit or proceeding brought against the Town under this Paragraph 3 and, to the extent they may wish, to assume the defense thereof, with counsel reasonably satisfactory to the Town. Sheehy shall not be liable for any settlement of any such action, suit or proceeding effected without the prior written consent of Sheehy.



4. Sheehy shall have the continuing right, at their option, to use the Town's sewer and to connect into the East Street sewer at any time after Sheehy's completion at manhole station 6 + 36 as shown on the Conceptual Plan and upon such connection Sheehy shall have the right to a usage capacity of a maximum flow of 20,000 gallons per day, all without any further cost of a connection fee to Sheehy except for the fee stipulated in Paragraph 5 of this Agreement:

If Sheehy ties-in as stated in the first sentence of this paragraph:

- (i) Sheehy and their successors shall be obligated to pay user fees as herein provided;
- (ii) Sheehy shall design and construct the connecting line, all at their sole cost;
- (iii) that portion of the connecting line in the Town from manhole station 6 + 36 on the Conceptual Plan shall, upon completion of said line and upon approval and acceptance by the Town, shall become the property of the town; and
- (iv) the Town, upon full payment, grants to Sheehy, without the necessity of any further documentation, an irrevocable license for purposes of installing and constructing that portion of the East Street sewer which lies between manhole station 6 + 36 to

the Town line on the Conceptual Plan including, without limitation, the right to remove pavement and to perform all other necessary work, and Sheehy agrees that, in exercising their rights under this License, Sheehy shall notify the Town of the date upon which construction is to be commenced and shall restore the areas affected to the condition existing before such construction as soon as possible and without any undue delay.

5. Sheehy shall pay a one-time fee to the Town in the amount of One Hundred and Fifty Thousand and 00/100 (\$150,000.00 Dollars ("Entry Fee") in consideration for the rights stipulated in this Agreement/License including, without limitation, the right to tie-in and use the Town's sewer as specified in Paragraph 4. Simultaneously with the execution of the Agreement/License, Sheehy shall pay a non-refundable deposit of Fifty Thousand and 00/100 (\$50,000.00) Dollars, payable on or before June 21, 1988, and balance due when the property is rezoned to ID or IA District by the Town of Andover or June 21, 1993, whichever shall first occur, time being of the essence. Sheehy shall have the right to an extension of three years, upon the same conditions and upon written notice five days before June 21, 1993, if said rezoning shall not have been approved as of June 21, 1993.

Sheehy shall pay ten (10.00%) percent interest per year on the One Hundred Thousand (\$100,000.00) Dollar balance payable on the 21st of each month. Interest shall be \$10,000

per year payable in monthly installments of \$833.33. In the event Sheehy shall fail to make timely payment, this Agreement shall be null and void if the Town so declares in writing regardless of any other provision of this Agreement.

The Town agrees that, upon payment by Sheehy of the Entry Fee, Sheehy shall not be subject to nor be liable for any other assessments, costs, charges or fees by reason of the connection to or construction, operation and maintenance by the Town of the East Street sewer southwesterly from manhole station 6 + 36 and that the Entry Fee is in lieu of any and all other such assessments, fees, charges and costs, except for a sewer usage fee established by the Town for outside users. The current outside user rate is \$3.00 per 1000 gallons, and the parties agree that the outside user rate may be changed or increased from time to time by the Town. Sheehy agrees, however, they are liable for all construction, operation and maintenance of that portion of the sewer and system which is northeasterly of manhole station 6 + 36 or in the Town of Andover.

6. The rights granted to Sheehy pursuant to this Agreement/License may be freely assignable by Sheehy without payment of any assessments, fees, charges or costs to the Town by any subsequent owner or any future tenant of each such Sheehy's Property, except for sewer user fees. Any assignee of Sheehy shall assume all debts and liabilities of Sheehy and Sheehy shall not be thereafter liable for any claim, costs, or demands arising out of the Agreement/License in damages of any type in law or equity.

and install the meters and meter equipment measuring and controlling the supply of water, which shall be located on Sheehy's Property.

The properly authorized officers, agents, and representatives of the Town shall at all times have free access to the meter or meters for the purpose of reading the registration of said meter or meters, and to examine and test the same to ascertain whether or not they are in good condition and repair. If, at any time, the said meter or meters shall fail to register correctly the quantity of water furnished and taken hereunder, or shall fail to register the flow of water through said meter or meters, and, therefore, shall prove unsatisfactory to the Town, they shall be replaced or repaired by Sheehy and the cost and expense of such replacement or repairs shall be paid by Sheehy.

8. It is further agreed that the Town may either in law or equity, by suit, mandamus or other proceeding, enforce or compel performance of any and all covenants herein contained and that if Sheehy or his assignee, in which case Sheehy shall not be liable, shall refuse, neglect, fail to pay promptly the sewer bills properly rendered, the Town may bring suit against Sheehy for the collection of such monies and/or for the termination of the use of the system, except that notwithstanding the foregoing before the Town exercises its remedies as stated herein, in the event the breach of this Agreement/License by Sheehy is non-monetary, Sheehy shall have thirty (30) days, after written notice thereof, to cure said

breach and if not capable of cure in such time then, using all due diligence, a reasonable period thereafter and, if, however, the breach of this Agreement/License is monetary, Sheehy shall have twenty (20) days, after written notice, to cure said breach.

9. All notices sent pursuant to this Agreement/License shall be properly given if sent personally (where a receipt is obtained) or if by certified mail, return receipt requested, postage prepaid or by Federal Express, Express Mail or some other form of expedited delivery to the Town at:

Mr. David G. Cressman, Town Manager  
Tewksbury Town Hall  
Tewksbury, MA 01876

with a copy sent simultaneously to:

Charles J. Zaroulis, Esq.  
Tewksbury Town Counsel  
9 Middlesex Street  
Lowell, MA 01852

and to Sheehy at:

Mr. Augustine P. Sheehy  
c/o Dundee Park Properties  
P.O. Box 3099  
Andover, MA 01810

and also to:

Mr. Jeffrey D. Sheehy  
c/o Dundee Park Properties  
P.O. Box 3099  
Andover, MA 01810

or to such other address as shall be specified by any party in like manner.

10. Plans shall be prepared at the sole cost and expense of Sheehy and shall be submitted to the Town and its engineers,

CDM, for review, and the reasonable costs of such review by CDM. incurred by the Town shall be borne by and reimbursed by Sheehy. 11. Sheehy shall be responsible for the construction work for the sewer extension by Sheehy beyond manhole station 6 + 36 on the conceptual plan and will obtain all necessary easements, permits and licenses concerning such construction, together with the approval, if necessary, of the Town of Andover permitting Sheehy to tie into the System. 12. During the course of Sheehy's construction of the sewer extension as stated herein, the Town (after obtaining the permission of the Town of Andover, if necessary) will have the right to inspect construction both on the street and on the property and the Town will receive two (2) sets of as-built plans on reproducible mylar sepi. 13. Sheehy will abide by all rules and regulations of the Town in connection with construction within public ways in the Town, including, without limitation, the securing of permits for "street opening", and, all construction shall be performed by Sheehy in a good and workmanlike manner and in accordance with the plans and specifications to be submitted to the Town and approved by the Town. Sheehy will abide by all rules and regulations of the Town regarding sewers and pre-treatment of industrial waste, as they may be amended from time to time. 14. This Agreement/License shall bind and inure to the benefit of and be enforceable by the parties and their

respective heirs, personal representatives, successors and assigns and to any purchaser of any portion of the Property.

The parties agree that they will duly execute any and all documents that are necessary to effect a recordation of the entire agreement with the Essex North District Registry of Deeds and the Middlesex North District Registry of Deeds.

15. The sewer line constructed by Sheehy shall have a minimum capacity of 60,000 gallons per day and it is understood by the parties that the Town has the right at its sole and absolute discretion to permit other properties or owners to connect to said sewer line constructed by Sheehy in order to use any capacity above 20,000 gallons per day.

16. The Town of Andover agrees to the terms of this Agreement and authorizes and permits Sheehy to construct said sewer extension and to discharge sewerage into the System.

17. The parties acknowledge that Brockway-Smith Company, Inc., is a party to a similar agreement with the Town to tie into the Town System and that Connecticut General Life Insurance Company intends to enter into a similar agreement. It is understood by both parties that if all three property owners enter into an agreement for 20,000 gallons per day use for a total of 60,000 gallons per day, the Town, nevertheless, has the right at its sole and absolute discretion to permit other properties or owners to connect to said sewer line to use any capacity above 60,000 gallons per day.

18. This Agreement/License contains the entire agreement among the parties and cannot be changed, modified, waived or

canceled except by an agreement in writing executed by all

parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement/License, by their duly authorized representative on

the day of July, 1988.

By:

Augustine P. Sheehy  
Individually and as Trustee

By:

Gerard D. Sheehy  
Individually and as Trustee

TOWN OF TEWKSBURY

By:

David G. Cressman  
Its Town Manager

TOWN OF ANDOVER

By:

Kenneth Mahoney, Its Town  
Manager on his and on  
behalf of the Board of  
Selectmen of the Town of  
Andover

Approved by the Board of  
Selectmen of the Town of  
Tewksbury

By:

John F. Kelley, Jr.  
Its chairman

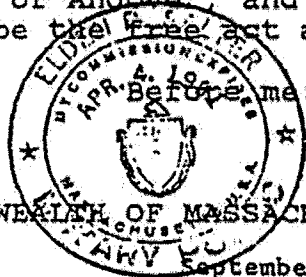


COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

*September 20*, 1988

Then personally appeared the above named Kenneth Mahoney Town Manager of the Town of Andover, and acknowledged the foregoing instrument to be the free act and deed of said Town.



Before me: *Edmund R. Jette*  
Notary Public  
My Commission Expires:

*April 4, 1991*

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

September 12, 1988

Then personally appeared the above named David G. Cressman, Town Manager of the Town of Tewksbury, and acknowledged the foregoing instrument to be the free act and deed of said Town.

Before me: *Edwina M. Hudson*

Notary Public  
My Commission Expires: 10/20/8

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

*7-22*, 1988

Then personally appeared the above named Augustine P. Sheehy, and acknowledged the foregoing instrument to be his free act and deed individually and as Trustee of Frontage Road Trust.

Before me: *John E. Sheehy*

Notary Public  
My Commission Expires:  
*5-30-91*

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

*September 22*, 1988

Then personally appeared the above named Jeffrey D. Sheehy, and acknowledged the foregoing instrument to be his free act and deed individually and as Trustee of Osgood Street Trust.

Before me: *Jeffrey D. Sheehy*

Notary Public  
My Commission Expires:

## MOTION

I hereby move that the Board vote to authorize the Chairman and the Town Manager to sign the Intermunicipal Sewer Use Agreement between Dascomb Road Limited Partnership and the Town of Tewksbury for the property at 160 Dascomb Road.

## REQUIRED FORM OF VOTE TO SUBMIT A STATEMENT OF INTEREST

### **REQUIRED VOTES**

If the SOI is being submitted by a City or Town, a vote in the following form is required from both the City Council/Board of Aldermen **OR** the Board of Selectmen/equivalent governing body **AND** the School Committee.

If the SOI is being submitted by a regional school district, a vote in the following form is required from the Regional School Committee only.

*\*Current votes for each SOI submission are required.*

### **FORM OF VOTE**

Please use the text below to prepare your City's, Town's or District's required vote(s).

### **DOCUMENTATION OF VOTE**

Documentation of each vote must be submitted **in hard copy** to the MSBA as follows:

- 1) For the vote of the City Council/Board of Aldermen or Board of Selectmen/equivalent governing body, *a copy of the text of the vote* must be submitted **with a certification** of the City/Town Clerk that the vote was duly recorded and the date of the vote must be provided.
- 2) For the vote of the School Committee, Minutes of the School Committee meeting at which the vote was taken must be submitted **with the original signature** of the Committee Chairperson.

Resolved: Having convened in an open meeting on **March 25, 2019** prior to the SOI submission closing date, the Board of Selectmen of Andover, Massachusetts, in accordance with its charter, by-laws, and ordinances, has voted to authorize the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest Form dated **April 11, 2019** for the Andover High School located at 80 Shawsheen Road which describes and explains the following deficiencies and the priority category(s) for which an application may be submitted to the Massachusetts School Building Authority in the future, herein, described as:

**Priority 2: Existing conditions that constitute severe overcrowding**

Andover High School has 1796 students and is well over the functional capacity of the building. In its report, MGT assessed the building capacity as 1517. However, an analysis by HMFH Architects finds that the core classrooms have space to accommodate only 1400 students, based on current MSBA standards. With the current enrollment, room utilization exceeds 95%, and 75% of the staff move from classroom to classroom to provide instruction. Twenty-five non-classroom spaces have been converted to classroom use. Teacher workrooms have been converted to small classrooms, teachers are planning lessons in storage closets, and there is almost no space for students or teachers to work in small groups or for staff to meet with parents. Eighty percent of classrooms are smaller than current MSBA standards. The cafeteria, hallways, and common areas were all designed for a lower student enrollment, thereby adding to the overcrowding. There is very limited and inadequate space for current instructional strategies or project-based learning or such programs as career technical programs, engineering, and robotics.

**Priority 4: Conditions expected to result in increased enrollment**

New/planned housing developments coupled with in-migration will lead to higher enrollment over the next two decades. The MGT study released in April 2017 projects enrollment exceeding 1900 within the decade. The October 2017 Cropper Demographic Study indicates that AHS enrollment will exceed 1800 students in 14 of the next 20 years and could exceed 1900 in some of those years. This added enrollment will create even greater pressure on already overcrowded classrooms and facilities.

**Priority 5: Issues surrounding school facility systems that require repair or replacement**

Many of the building systems are outdated and in need of replacement. The boilers are 24 years old and will need to be replaced. Nearly all of the windows need replacement, with some stemming from original construction. The electrical distribution system is inadequate and requires upgrading. The academic areas lack thermal comfort, which impacts teaching and learning. Because of the building's uninsulated masonry walls, the outdated and drafty window systems, and the concrete structure that connects directly to the outside with no thermal break, there is no way to control interior temperatures effectively using through-wall unit ventilators. The vents introduce direct outside air with limited temperature control, exacerbating uncomfortable room temperatures and negatively impacting learning conditions. The cooling equipment uses refrigerant that has a regulatory phase-out in 2020. The main academic building lacks an automatic fire suppression system. The building site has significant issues with traffic congestion, circulation, and parking. Numerous building features are not compliant with ADA accessibility recommendations.

**Priority 7: Programs not currently available due to facility constraints**

AHS is limited by space constraints from offering important educational programs outside of the basic core curriculum. As a result, AHS provides primarily introductory level courses in the arts, engineering, robotics, and computer programming—despite student demand for advanced coursework. The size of most classrooms limits active engagement and collaborative activities, as well as project-based learning. There is also no space for credit recovery classes to keep students on target to meet their graduation requirements, or for on-site mental health counseling or drug and alcohol counseling. The lack of space limits programming for students with special needs. There is no space to serve students with emotional disabilities. Overcrowded classrooms make it difficult to include special education students in classes co-taught by regular and special education teachers. Space and classroom size limitations compromise all teachers' ability to provide differentiated and engaging instruction,

thereby diminishing the quality and depth of student learning. The increase in enrollment over the next decade will significantly exacerbate these problems;

and hereby further specifically acknowledges that by submitting this Statement of Interest Form, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the City/Town/Regional School District to filing an application for funding with the Massachusetts School Building Authority.

## **CERTIFICATION**

The Board of Selectmen vote took place on March 25, 2019 and was duly recorded.

**Town Clerk & Chief Strategy Officer:**  
Austin Simko

\_\_\_\_\_  
Date:

Town Stamp:

**W A R R A N T**  
**THE COMMONWEALTH OF MASSACHUSETTS**  
**ESSEX, SS.**

<b>ARTICLE 11</b>	<b>GENERAL HOUSEKEEPING ARTICLES (A THROUGH G)</b>
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To see if the Town will vote the following consent articles, or take any other action related thereto:

**G. Rescinding of Bond Authorizations** To see if the Town will vote to rescind unissued bond authorizations from prior Town Meetings, or take any other action related thereto.

*On request of the Finance Director*

<b>ARTICLE 64</b>	<b>SPRING GROVE CEMETERY TRANSFER OF PROPERTY</b>
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To see if the Town will vote to transfer the care, custody and control of the Property located on Spring Gove Road shown as "Area to be conveyed from the inhabitants of the Town of Andover to J&J Ball Realty Trust Area = 8,496 S.F." shown on a "Plan of Land in Andover, Massachusetts showing Land to be Conveyed from the Inhabitants of the Town of Andover to J&J Ball Realty Trust, 47 Spring Grove Road, Andover, Massachusetts dated January 13, 2017, Revised January 14, 2019" prepared by Merrimack Engineering Services (on file at the Clerk's Office) which is part of the Spring Grove Cemetery to the care, custody and control of the Selectmen for the purposes of conveying said parcel to J&J Realty Trust and to authorize the Selectmen to convey said parcel to J&J Realty Trust in consideration of the sum of at leaset \$7,800; and to petition the Legislature to pass a Special Act in accordance with Mass. General Laws, ch. 114, §17, because the cemetery has been used as a burial place for more than one hundred years, and any other applicable law to authorize the above transfer, provided that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition, or take any action related thereto.

*On request of Mark Johnson and others*

JOHNSON &  
BORENSTEIN, LLC  
ATTORNEYS AT LAW

12 Chestnut Street  
Andover, MA 01810-3706  
Tel: 978-475-4488  
Fax: 978-475-6703  
www.jbllclaw.com  
mark@jbllclaw.com

Mark B. Johnson (MA, NH, DC)  
Donald F. Borenstein (MA, ME, NH)

Rachel Davis Baime (MA)  
Gregory R. Richard (MA, NH)  
Kathleen M. Heyer (MA, NH)  
Thomas D. Orr (MA)

Of Counsel  
Robert W. Lavoie (MA, NH)  
Lorri S. Gill (MA)

Paralegals  
Karen L. Bussell  
Danielle R. Corey  
Lianne Patenaude  
Ellen M. Melvin  
Tina M. Wilson

March 21, 2019

Board of Selectmen  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810

Re: 47 Spring Grove Road, Andover, MA

Dear Board of Selectmen:

Since the last meeting, Town Counsel was able to locate a plan in the Conservation Commission file and I was able to locate the complete Determination of Applicability issued by the Conservation Commission. You will find both documents enclosed.

In addition, the building inspector was able to locate plans for the garage, which is enclosed.

Should you have any questions, please feel free to contact me.

Very truly yours,

JOHNSON & BORENSTEIN, LLC



Mark B. Johnson

MBJ~klb  
Enclosures

Form 2



Commonwealth  
of Massachusetts

COPY

FILE COPY

DEQE File No.

(To be provided by DEQE)

City/Town Andover

Applicant John R. Ball

**Determination of Applicability**  
**Massachusetts Wetlands Protection Act, G.L. c. 131, §40**

From Andover Conservation Commission Issuing Authority

To John R. Ball same  
(Name of person making request) (Name of property owner)

Address 47 Spring Grove Rd. Address same  
Andover, MA 01810

This determination is issued and delivered as follows:

- ☐ by hand delivery to person making request on \_\_\_\_\_ (date)
- ☒ by certified mail, return receipt requested on July 13, 1988 (date)

Pursuant to the authority of G.L. c. 131, §40, the Andover Conservation Commission  
has considered your request for a Determination of Applicability and its supporting documentation, and has  
made the following determination (check whichever is applicable):

This Determination is positive:

1. ☐ The area described below, which includes all/part of the area described in your request, is an Area Subject to Protection Under the Act. Therefore, any removing, filling, dredging or altering of that area requires the filing of a Notice of Intent.
  
2. ☐ The work described below, which includes all/part of the work described in your request, is within an Area Subject to Protection Under the Act and will remove, fill, dredge or alter that area. Therefore, said work requires the filing of a Notice of Intent.



3. ☐ The work described below, which includes all/part of the work described in your request, is within the Buffer Zone as defined in the regulations, and will alter an Area Subject to Protection Under the Act. Therefore, said work requires the filing of a Notice of Intent.

This Determination is negative:

1. ☐ The area described in your request is not an Area Subject to Protection Under the Act.
2. ☐ The work described in your request is within an Area Subject to Protection Under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
3. ☒ The work described in your request is within the Buffer Zone, as defined in the regulations, but will not alter an Area Subject to Protection Under the Act. Therefore, said work does not require the filing of a Notice of Intent. (see attached sheet for special conditions.)
4. ☐ The area described in your request is Subject to Protection Under the Act, but since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required: \_\_\_\_\_

Issued by \_\_\_\_\_ Conservation Commission

Signature(s) Donald S. Cooper

Amelia K. Reed

Ly. Berkey

Philip F. Varnum

Scott Matsumoto

This Determination must be signed by a majority of the Conservation Commission.

On this 7th day of July, 19 88, before me personally appeared Donald S. Cooper, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

Julia G. Hillner  
Notary Public

5-14-93  
My commission expires

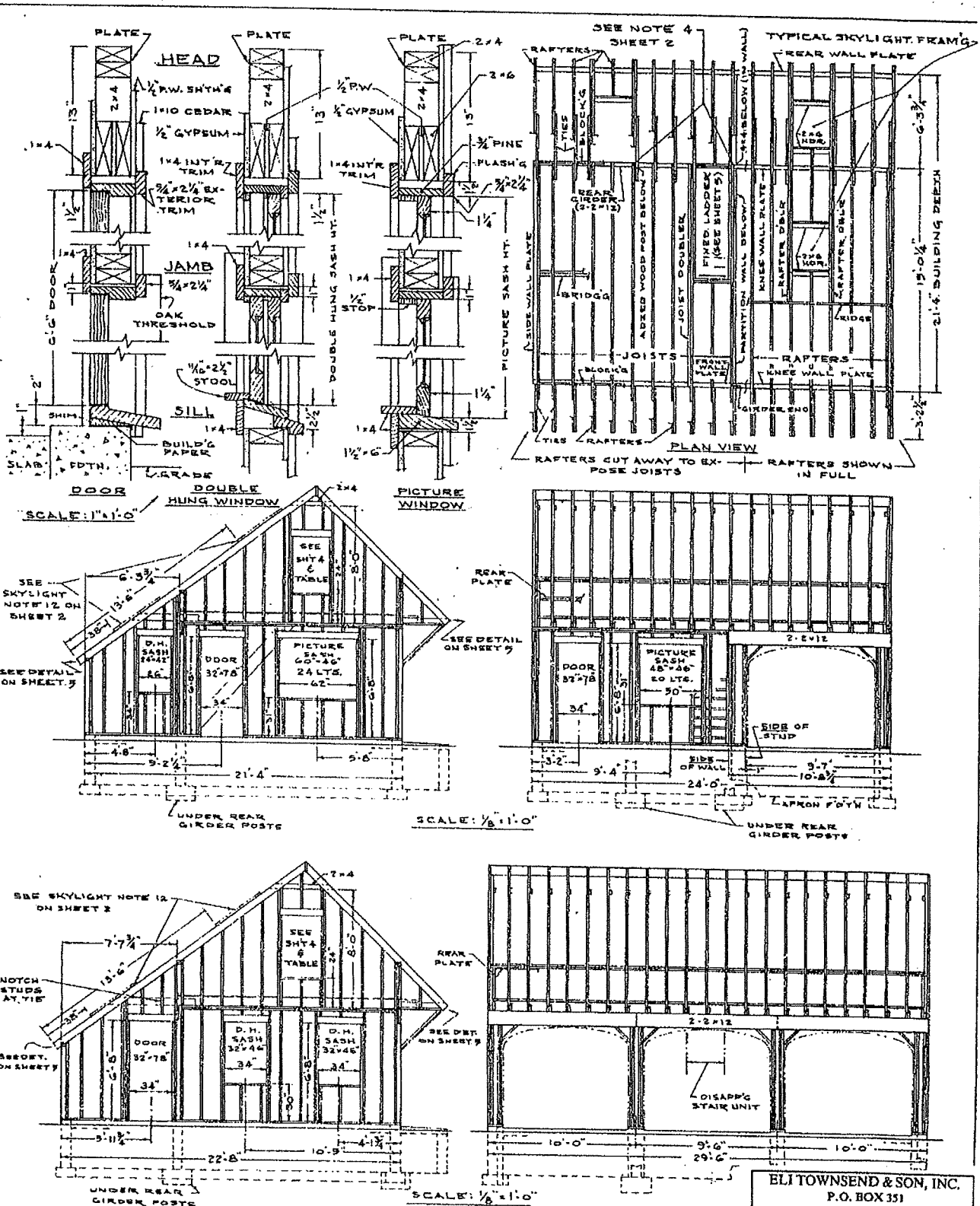
This Determination does not relieve the applicant from complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations. This Determination shall be valid for three years from the date of issuance.

The applicant, the owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the Department of Environmental Quality Engineering to issue a Superseding Determination of Applicability, providing the request is made by certified mail or hand delivery to the Department within ten days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and the applicant.

Determination of Applicability - Special Conditions

47 Spring Grove Road

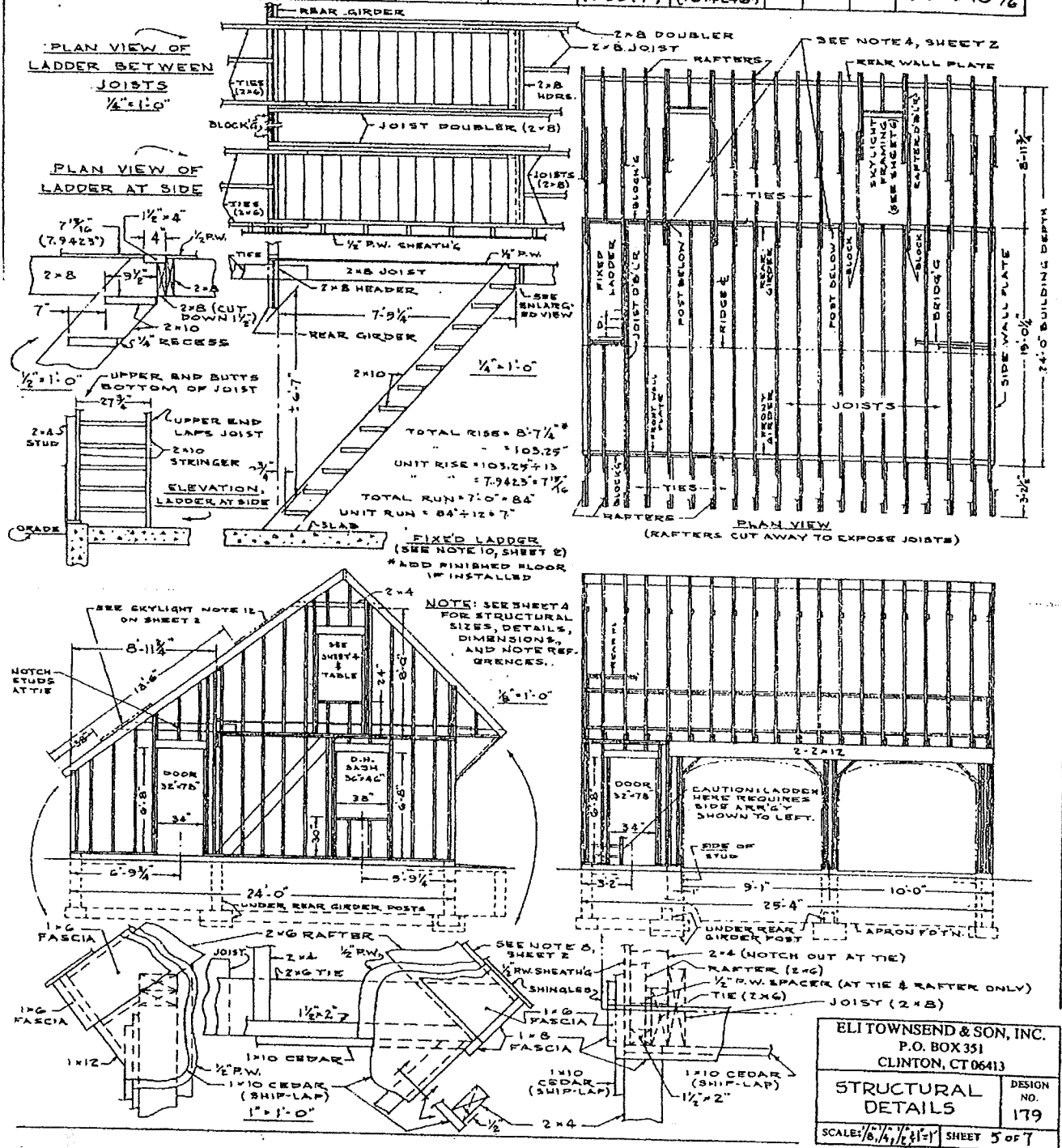
1. Staked hay bale sediment controls shall be effectively installed so as to prevent sedimentation into the wetland. These controls shall be inspected by the Conservation Commission or its Agents prior to commencement of any earth-disturbing work on the site.
2. The above sediment controls shall serve as a limit of construction beyond which no earth-disturbing activity shall occur.



NOTE: SEE SHEET 4 FOR STRUCTURAL SIZES, PERTINENT DETAILS, DIMENSIONS, AND NOTE REFERENCES.

TABLE OF DIMENSIONS SHOWN ON SHEET 4

BUILD'G DEPTH	A	B	C	D	E	F	G	H	J	K	SASH	LTS.
20'-0"	4'-0 1/8" (4.0789)	7'-3 3/8" (7.3226)	6'-2 1/8" (6.2240)	12'-1 3/4" (12.1474)	5'-2 7/8" (5.2404)	1'-0 3/8" (1.0677)	8'-8 1/2" (8.7103)	3 1/2"	2'-2"	3'-10"	2'-0" x 3'-6" 5/8"	
21'-4"	"	8'-1 3/8" (8.1307)	7'-10 1/8" (7.8906)	11'-5 3/8" (11.4328)	5'-9 3/4" (5.8118)	2'-0 1/8" (2.0677)	9'-3 3/8" (9.2818)	"	2'-6"	3'-10"	2'-4" x 3'-6" 5/8"	
22'-8"	"	8'-11 1/8" (8.9389)	9'-6 1/8" (9.5573)	10'-8 3/8" (10.7189)	6'-4 3/8" (6.3833)	3'-0 1/8" (3.0677)	9'-10 1/4" (9.8532)	"	2'-8"	4'-2"	2'-6" x 3'-10" 5/8"	
24'-0"	"	9'-9" (9.7470)	11'-2 1/8" (11.2239)	10'-0 1/8" (10.0046)	6'-11 1/8" (6.9547)	4'-0 1/8" (4.0677)	10'-5 1/8" (10.4246)	"	2'-8"	4'-2"	2'-6" x 3'-10" 5/8"	

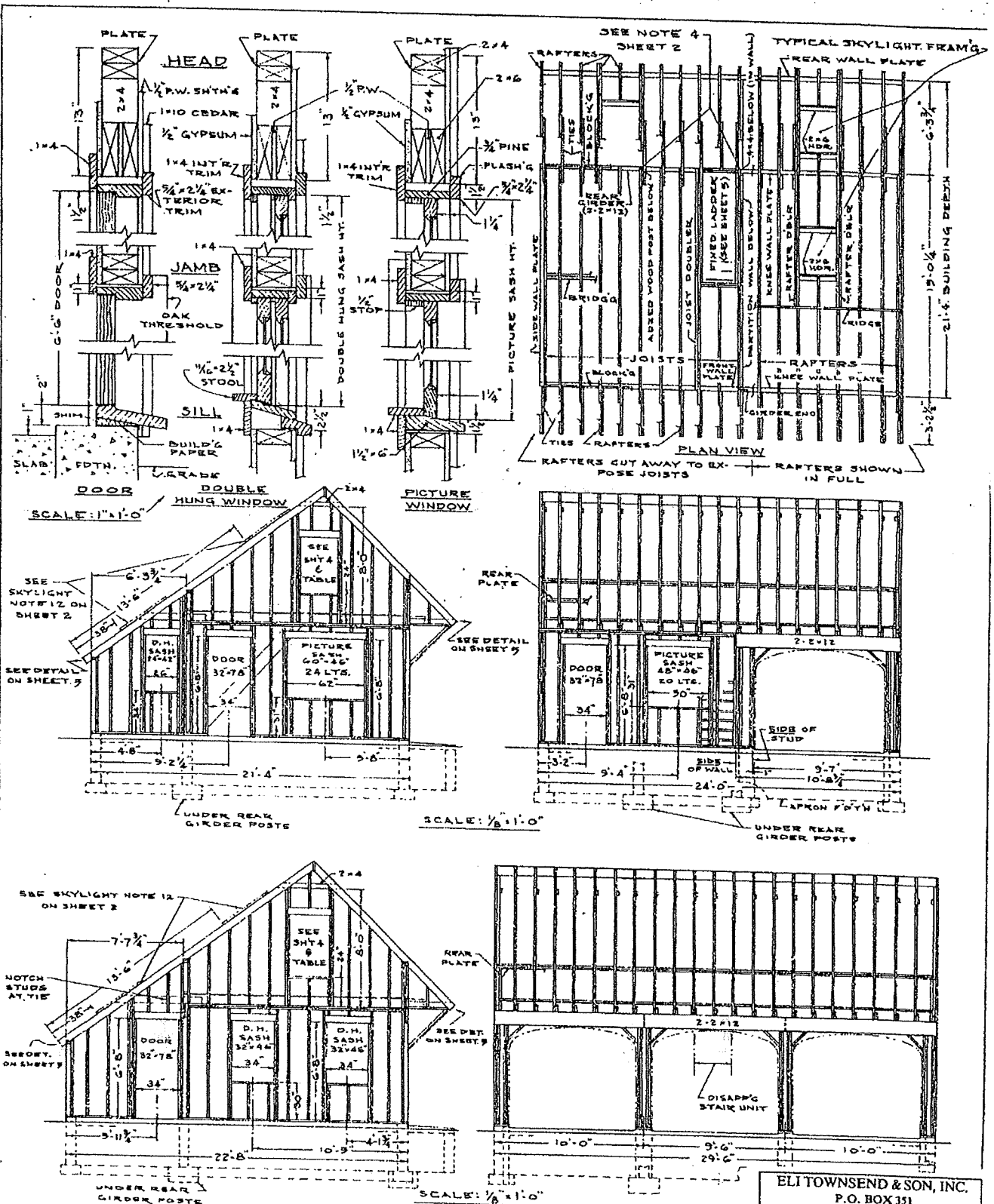




These plans for the "Carriage Shed", a flexible early American design, provide details to vary the building depth from 20' to 24', at 16" increments, and to vary the front arrangement as desired. We have shown five possible side and four possible front arrangements, any combination of which can be used; thus, twenty arrangements are suggested, and an infinite number of arrangements other than those shown is possible. The framing details for doors, windows, and basic structure can be utilized to construct any variation you may wish to employ; for example, the side of the building opposite to that shown on Sheet 3 need not have the door and/or window arrangement shown; a shop at side could be enlarged or made narrower than shown; the building could have 8 car bays; or 4 car bays with a shop and/or passage at side; etc. The scale of the drawings is sufficient for clarity, ranging up to 1" per foot for details. The 1/8" per foot scale drawings are for pictorial presentation, or for guidance in framing arrangement and the establishment of materials required. Importantly, the size of the drawing sheets accommodates easy reproduction by duplicating methods available almost universally today, to make up the plan sets required for construction purposes; a method of reproduction should be chosen which minimally distorts the drawings. The copyright of the design is for our protection from malicious infringement; the purchaser of our designs may feel free to make copies for his own use in his construction efforts.

1. Local codes, applicable regulations, and requirements peculiar to the area of construction should be reviewed and complied with in construction.
2. The foundation walls are shown as 8" thick poured concrete; alternatively, 7-5/8" concrete blocks can be utilized.
3. The basic foundation and framing arrangement is shown on Sheet 4 as a 20' x 20' building; the method of increasing the depth is also shown. Constant reference to this drawing is required for all arrangements. For a building with a front dimension far greater than any shown on the drawings, internal lateral "X" bracing must be installed (perhaps in a partition wall) to the rear of the rear girder, perpendicular to the rear wall, located such that no part of the building has more than approximately 30' between end walls or such lateral support(s) and an end wall.
4. The span between supports for the second floor joists (15'-0 1/4" minus 7", or 14'-5 1/4") is constant for all arrangements. Girder supports (comprised of two 2 x 12's) are in turn supported by exterior wall studs, steel posts (or say 5 x 5 adzed wood posts), or 4 x 4 posts in partition walls, the posts no greater than 10' apart, edge to edge, the posts requiring masonry supports with footings, the location of which should be established before foundation work commences. Any joints in the 2 x 12 girder members must be staggered, and the joints placed over supports.
5. The second floor joists (2 x 8) must extend, or be extended, to the front and rear rafters (except as noted in 12, below). On the drawings the joists are shown as 16' long, with a front overhang of 11 1/4", located in the plane of the rafters except at sides, with 2 x 6 (for nailing efficiency) tie members lapped to and extending from each joist end to the rafters. Where pocketbook permits, the joists can be one piece from front to rear rafters (length required is the same as building depth), obviating the ties, with the joists placed on either side of the rafters.
6. The drawings show 1/2" plywood sheathing on the building exterior. The sheathing on the front wall is specially applied, as shown on Sheets 4 and 7, to insure lateral stiffness for that wall which has large openings.
7. Exterior wall covering is shown as 1 x 10 ship-lap cedar boards. If combined sheathing-and-exterior-surface material is used, such as Texture One Eleven plywood, or equal, see Detail "A" on Sheet 4; liners must be placed behind the fascia members below the lap line, and the second floor window jambs may require width adjustment. Use white pine for window and door trim, and fascia members, all of which are shown on Sheets 5 and 6.
8. Roof covering can be asphalt, plastic, or wood shingles. If wood shingles are used, 1 x 4 boards spaced at the shingle exposure, fastened with galvanized nails, can be used in lieu of the 1/2" plywood roof sheathing shown on the drawings.
9. Three types of vehicle doors are shown on Sheet 7. (Note for cold climates: the sliding (by-passing) type is difficult to make weatherlight.) The ellipse over the door opening is described by drawing the point of a pencil (as at point "C") along an 8'-6" length of wire or cord affixed to points "A" and "B" shown on the drawing.
10. A disappearing stair unit, or a fixed ladder (see Sheet 5), the choice and location determined by the limits of arrangement, can be used for access to the second floor. Possible locations of each type are shown. Safety rails must be installed at the ladder opening, and hand rail(s) at the side(s) of the ladder. Alternatively, outside stairs with 8" step rise and 9" tread, at the building side, with a door at the second floor level, can be installed. Cropped joists must be headered to adjacent joists.
11. The cupola can be built on the ground in two parts, the separation being at the lower end of the upper trunk. The base of the cupola, including the upper 2 x 3, can be fastened to the roof ridge, and then the lower edges of the pine side members of the upper trunk can be lowered around the 2 x 3 and screwed fast. If the framing around the louvers is thicker than the pine side members, the periphery of the back of the framing should be reduced in thickness to provide a flush exterior surface of louver and trunk boards.
12. Skylights on the rear roof are suggested (with no consideration whatever for a shed dormer). Suggested size is 30" x 46" (makers' dimensions vary). Locate to suit; the lower unit shown assumes the space to the rear of the rear girder is open from slab to roof, with the ties exposed, and no tie under the center of the skylight. On a 20' depth building avoid placing the units in the center to avoid the cupola. Typical roof and tie framing is shown on Sheet 6; flashing must be installed around the periphery under the shingles.
13. Depending upon the location of the building, and/or the use of space(s) within it, fire resistive inside wall and ceiling gypsum wallboard covering may be required in at least the garage space (check local fire regulations); if installed, 1 1/2" thick solid blocking fire stops must exist or be fitted in wall and roof closed framing spaces at floor and ceiling levels.
14. Wood structural material assumed in the design is No. 2 grade, or better, of Douglas Fir-Larch (North), or No. 2 Southern Pine, or wood of comparable strength and weight characteristics. Reference: National Forest Products Association, 1619 Massachusetts Avenue, N.W., Washington, D.C. 20036.
15. A name board, 1" by 7" by suitable length, hung over the door(s), adds a nice finishing touch to the "Carriage Shed".

ELI TOWNSEND & SON, INC.	
P.O. BOX 351	
CLINTON, CT 06413	
DESIGN NO.	179
NOTES	



ELI TOWNSEND & SON, INC.  
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CLINTON, CT 06413

STRUCTURAL  
DETAILS

DESIGN  
NO.  
170

<b>ARTICLE 26</b>	<b>ELECTRONIC VOTING</b>
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To see if the Town will vote to amend Article II of the General Bylaws by adding the following as Section 5.2:

“Electronic Voting. Subject to the availability of a system to enable electronic voting by using wireless handheld mobile devices, the Moderator may count the vote on any matter before the Town Meeting by the use of such system.” and further, that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws, or take any other action related thereto.

*On request of Brian Major and others*

<b>ARTICLE 27</b>	<b>RENTAL OF ELECTRONIC VOTING SYSTEM</b>
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To see if the Town will raise by taxation or transfer from available funds or any combination thereof and appropriate \$25,000 to pay for the rental of an electronic voting system for the use at Annual and Special Town Meetings for fiscal year 2020, or take any other action related thereto.

*On request of Brian Major and others*

<b>ARTICLE 41</b>	<b>PARKING AND HARDSCAPE IMPROVEMENTS</b>
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$400,000 for the purpose of purchasing services and materials related to making improvements to parking and hardscapes, including any other costs incidental and related thereto, or to take any other action related thereto.

*On request of the Planning Director*

<b>ARTICLE 49</b>	<b>AMEND ZONING BYLAW ARTICLE VIII: SOLAR ENERGY</b>
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To see if the Town of Andover will vote to amend the Andover Zoning Bylaw, Article VIII, Section 3.1.3 Table of Use Regulations Appendix A Table 1, Section 4.2 Accessory Building and Structures, and Section 10 Definitions by adding the following:

Add to Section 3.1.3 Table of Use Regulations Appendix A Table 1

E. Other Main Uses	SRA	SRB	SRC	APT	LS	OP	GB	MU	IG	IA	ID	ID2
9. Solar Energy Systems												
a. Ground Mounted-Small Scale as an accessory use (See section 4.2.5)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
b. Ground Mounted-Small Scale - Carport	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
c. Roof/Building Mounted	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
d. Ground Mounted-Large Scale (See Section 10 Major Non-Residential Project)	N	N	N	N	N	N	N	N	PB	PB	PB	PB



#### Add Section 4.2.5 Solar Energy Ground Mounted

Ground Mounted Small Scale as an accessory use and Ground Mounted - Small Scale - Carport shall be allowed on properties as an accessory use in rear yards and side yards, but not in front yards, provided such uses are not located nearer than 10 feet to any property line of the rear yard, they comply with the minimum setback requirements for side yards in the particular district, and they do not exceed 20 feet in height.

#### Add to Section 10 Definitions

Solar Energy System Ground Mounted – Small Scale - A solar photovoltaic system that is structurally mounted on the ground (i.e., not roof mounted) and has a maximum output of electric power production in Direct Current (i.e. Rated Nameplate Capacity) of less than 250 kW DC or less than 1,000 square feet of solar panel area or less.

Solar Energy System Ground Mounted – Large Scale - A solar photovoltaic system that is structurally mounted on the ground (i.e. not roof mounted) and has a minimum output of electric power production in Direct Current (i.e. Rated Nameplate Capacity) of 250 kW DC or more or more than 1,000 square feet of solar panel area. Solar Energy System Ground Mounted – Large Scale shall also include Solar Carport Energy Systems of 250 kW DC or more than 1,000 square feet of solar panel.

Solar Energy System Roof/Building Mounted - A solar photovoltaic system that is structurally mounted on the roof or side of the building.

Solar Energy System Carport System – A Solar Energy System Ground Mounted that also provides cover and shade for parking and/or pedestrian areas.

#### Add d. to Section 10 Major Non-residential Project definition

d. A proposal to construct a Solar Energy System Ground Mounted - Large Scale.

And further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of By-Laws, or take any other action related thereto.

*On request of the Planning Board*

<b>ARTICLE 54</b>	<b>SPECIAL PERMIT LAPSE</b>
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To see if the Town will vote to amend Section 9.4.7 of the Town's Zoning Bylaw, Special Permit Lapse by deleting "24 months" and replacing it with "36 months" and to add after the word "construction" "pursuant to permit", to read:

#### 9.4.7 Lapse

Special permits shall lapse if a substantial use thereof or construction pursuant to permit thereunder has not begun, except for good cause, within 36 months following the filing of the special permit

approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

And further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws, or take any other action related thereto.

*On request of the Planning Director*

<b>ARTICLE 56</b>	<b>AMEND SECTION 51 OF BYLAW ARTICLE XII – BAN POLYSTYRENE ONLY</b>
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To see if the Town will amend Article XII §51 of the Town By-Laws for Polystyrene - Food, Beverage Ware, & Packaging Reduction as listed below; and to see if the Town will vote to appropriate and raise by taxation or available funds the amount of \$2,500 to provide education and outreach on this amended By-Law to the affected establishments before its new effective date:

- Delete entire first paragraph prior to Subsections 1-6
- In Subsection 1: delete "through the use of reusable, recyclable, biodegradable and/or compostable materials" at end of the 10th point; and delete "and require the use and distribution of biodegradable, compostable, reusable, or recyclable products or materials in their place" at the end of the 12th point.
- In Subsection 2: delete definitions for "ASTM Standard", "Biodegradable", "Compostable, "Recyclable", and "Reusable".
- In Subsection 3: delete "and distribution" in first line; delete existing subparagraph b. and replace with "b. All food establishments using any disposable food service ware are prohibited from using any such ware containing Polystyrene"
- In Subsection 4: delete "person" and replace with "food or retail establishment" in the first sentence; delete "six" and replace with "twelve" in the second sentence; delete in their entirety the third and fourth sentences; add subparagraph c "c. Any disposable food service ware in inventory prior to the effective date in Subsection 6 (b) shall be exempt from this bylaw"
- In Subsection 6: delete "January 1, 2019" and replace with "May 1, 2020" in subparagraph b.

*On request of Keith Saxon and others*

<b>ARTICLE 57</b>	<b>WATER COMMISSION</b>
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To see if the Town will vote to accept the provisions of Section 39A of Chapter 40 of Massachusetts General Laws to elect a Board of Water Commissioners in accordance with Section 69A of Chapter 41 of the Massachusetts General Laws at the next local election and cease having its Board of Selectmen act as such upon election of said Commissioners.

*On request of Jose Albuquerque and others*

<b>ARTICLE 58</b>	<b>REPRESENTATIVE TOWN MEETING</b>
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To see if the Town will vote to have the Town Moderator appoint a special Governance Committee of nine residents, one from each precinct, to make a study and investigation of ways and means of establishing a Representative Town Meeting for the Town of Andover as the legislative branch of Town Government. Said Committee shall report its findings and recommendations to the Town at the 2020 Annual Town Meeting, or sooner.

*On request of Jose Albuquerque and others*

<b>ARTICLE 59</b>	<b>FREE CASH</b>
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To see if the Town will transfer from Free Cash a sum of money, in the amount of 20% of the most recent certified Free Cash balance or if not Spring 2018 to reduce the tax rate for Fiscal Year 2019, from available funds, a sum of money to reduce the tax rate for FY19, or take any action in relation thereto.

*On request of Jose Albuquerque and others*

<b>ARTICLE 62</b>	<b>GREENWOOD ROAD SIDEWALK</b>
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$888,000 for the purpose of constructing a sidewalk on Greenwood Road between Lowell Street and High Plain Road, including any other costs incidental and related thereto, or to take any other action related thereto.

*On request of Deepa Naik and others*

<b>ARTICLE 63</b>	<b>DASCOMB ROAD SIDEWALKS</b>
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To see if the town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$800,000 for the purpose of constructing a sidewalk on Dascomb Road between Clark Road and Andover Street, including any other costs incidental and related thereto, or to take any other action related thereto.

*On request of Kelly Michaud and others*

<b>ARTICLE 66</b>	<b>PLANNING BOARD TERM</b>
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To see if the Town will vote:to amend Article III, §3(b)(1) of the Town By-Laws by striking the phrase "terms of five years" and replacing it with "terms of three years" and to apply the foregoing amendment to (a) new Planning Board candidates and (b) incumbent Planning Board candidates at the expiration of their terms.

*On request of Brad Weeden and others*